SUPREME COURT OF THE UNITED STATES.

No. ~~247.~~ 126

THE UNITED STATES, APPELLANTS,

vs.

ELLEN E. WHITE, WIDOW, AND JAMES I. A. WHITE, CHARLES E. WHITE, AND MARY ELLEN WHITE, HEIRS OF CHARLES WHITE, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 247.

THE UNITED STATES, APPELLANTS,

vs.

ELLEN E. WHITE, WIDOW, AND JAMES I. A. WHITE, CHARLES E. WHITE, AND MARY ELLEN WHITE, HEIRS OF CHARLES WHITE, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

"Pala."

INDEX.

	Original.	Print.
Index to proceedings before board of commissioners	3	1
Petition by claimant to the board	7	3
Deposition of José Castro for claimant	12	4
Frederick Hall for claimant	14	5
José Noriega for claimant	16	6
Antonio Maria Pico for claimant	19	7
C. T. Ryland for claimant	22	8
José Noriega for claimant	23	9
Salvio Pacheco for claimant	26	10
Exhibit H. H. No. 1, annexed to deposition of José Castro, being grant, map, and record of juridical possession	32	12
Map	36	14
Translation of Exhibit H. H. No. 1	52	20
Exhibit H. H. No. 2, annexed to deposition of José Castro, being will of José Joaquin Higuera	72	29
Translation of Exhibit H. H. No. 2	78	31
C.—Copy will of M. B. Soto de Higuera, &c	83	33
Translation of "C"	88	35
D.—Deed from Domingo Higuera to Charles White	93	37
Exhibit B. P. L., annexed to deposition of Salvio Pacheco, being will of Doña M. B. Soto	94	37
Translation of Exhibit B. P. L	99	39
E.—Deed from Man'l Higuera *et al.* to J. M. Higuera	105	41
F.—Deed from J. Higuera *et al.* to Charles White	107	43

	Original.	Print
G.—Deed from J. M. Higuera to Charles White	111	44
Stipulation admitting testimony	113	45
Stipulation consolidating cases 638 and 677	114	45
Deposition of James Alex. Forbes for claimant	115	45
Motion to substitute E. E. White *et al.* for C. White, deceased	119	47
Order substituting E. E. White *et al.* for C. White, deceased	120	47
Opinion of the board confirming the claim	120	47
Decree of confirmation	124	49
Order to make out transcripts	126	50
Certificate of secretary of the board	127	50
PROCEEDINGS IN DISTRICT COURT.		
Petition for review by U. S. attorney	128	50
Answer of claimants	129	51
Stipulation admitting testimony in case 238	130	51
Notice that appeal will be prosecuted by U. S	131	52
Decree of confirmation	132	52
Stipulation that no appeal will be taken	135	53
Order to proceed as under final decree	137	54
Order to return survey	138	54
Petition and affidavits for return of survey	139	55
Order to return survey	144	57
Monition	146	57
Order on return of monition	148	58
Affidavit of Nathan Porter	149	59
Exceptions to right of Leavenworth to intervene	151	59
Exceptions of T. M. Leavenworth to survey	152	60
Exceptions of claimants to survey	156	61
Order allowing exceptions of U. S. to be filed	157	62
Exceptions of United States to survey	158	62
Order allowing U. S. two weeks to close proofs	161	63
Deposition of John F. Pyle for United States	163	64
C. J. Healy for United States	177	69
Exhibits Healy Nos. 1 and 2, plat of surveys	202	77
Deposition of Jno. P. Henning for United States	203	77
Affidavit of C. E. Allen	237	88
Order directing surveyor general to make survey	239	89
Deposition of Smith Peck for Uni ed States	240	89
Peter Quivvey for claimants	259	95
Exhibit Quivvey No. 1, diseño of Pala	274	100
Deposition of A. M. Pico for claimants	276	101
Antonio Chabolla for claimants	303	109
Charles T. Healy for claimants	315	113
Exhibit Healy No. 2, plat of survey.		
Affidavit of José Feliz	344	122
Affidavit of Sebastian Peralta	347	123
Stipulation to take testimony in Santa Clara county	350	124
Deposition of Henry Bee for claimants	351	125

	Original.	Print
Deposition of José Noriega for claimants	386	136
W. C. Wilson for claimants	403	142
Agustin Alviso for claimants	413	145
M. B. de Hamel for claimants	430	150
Thomas Campbell for claimants	456	159
A. M. Pico for claimants	478	165
Wm. Daniels for United States	489	169
C. T. Healey for claimants	497	172
Jasper D. Gunn for claimants	520	179
Exhibit B	524	180
Exhibit C	526	181
Exhibit J. B. H. No. 1 (diseño)	528	182
Exhibit J. B. H. No. 2	530	182
Opinion confirming survey	533	183
Decree approving survey (plat annexed)	553	190
Map	554	190
Order granting appeal in behalf of U. S	555	191
Clerk's certificate	557	191

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twenty-sixth day of February anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles White, for the place named "Pala" was presented, and ordered to be filed and docketed with No. 638, and is as follows, to wit:

(Vide page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *March 1st*, 1853.

In case No. 638, Charles White, for the place named "Pala," the deposition of José Castro, a witness in behalf of the claimant, taken before commissioner Hiland Hall, with documents marked
4 H. H. Nos. 1 and 2, and translations marked A. B., annexed thereto, was filed.

(Vide page 9 of this transcript.)

SAN FRANCISCO, *September* 5, 1853.

In the same case the deposition of Frederick Hall, a witness in behalf of the claimant, taken before commissioner R. Aug. Thompson, with documents marked E, F, G, and R, T, annexed thereto, was filed.

(Vide page 10 of this transcript.)

SAN FRANCISCO, *November* 10, 1853.

In the same case the deposition of José Noriega, a witness in behalf of the claimant, taken before commissioner Alpheus Felch, was filed.

(Vide page 12 of this transcript.)

SAN FRANCISCO, *November* 11, 1853.

In the same case the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before commissioner Alpheus Felch, was filed.

(Vide page 15 of this transcript.)

SAN FRANCISCO, *November* 14, 1853.

In the same case the deposition of C. T. Ryland, a witness in behalf of the claimant, taken before commissioner Thompson Campbell, was filed.

(Vide page 17 of this transcript.)

SAN FRANCISCO, *December* 6, 1853.

In the same case the counsel for the claimant filed the following motion, to wit :

(Vide page 99 of this transcript.)

Whereupon the following order was made, to wit :

(Vide page 99 of this transcript.)

SAN FRANCISCO, *January* 12, 1854.

In the same case the counsel for the claimant filed the following stipulation, to wit :

(Vide page 93 of this transcript.)

In the same case the deposition of José Noriega, a witness in behalf of the claimant, taken before commissioner R. Aug. Thompson, was filed.

(Vide page 18 of this transcript.)

SAN FRANCISCO, *Sept.* 22, 1854.

In the same case the deposition of Salvio Pacheco, a witness in behalf of the claimants, taken before comm'r Peter Lott, was filed.

(Vide page 20 of this transcript.)

SAN FRANCISCO, *December* 5, 1854.

Case No. 638 was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *December* 12, 1854.

Case No. 638 was submitted without argument, and taken under advisement by the board.

In the same case the counsel for the claimant filed the following stipulation, to wit :

(Vide page 93 of this transcript.)

SAN FRANCISCO, *December* 19, 1854.

In the same case commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 101 of this transcript.)

And the following order was made, to wit :

(Vide page 105 of this transcript.)

7 *Petition.*

To the Honorable the board of United States land commissioners for the adjudication of California land claims:

The petition of Charles White, claiming the tract of land called "Pala," which tract being one square league ("sitio de ganado mayor") in extent, is situate in the county of Santa Clara, and State of California, respectfully represents, that on the fifth day of the month of November, in the year of our Lord one thousand eight hundred and thirty-five, José Castro, then governor ad interim and political chief of the department of the Californias, (whereof the now State of California was then a portion,) in pursuance of the powers in him vested by the constitution, laws and regulations then in force in the said department, made a grant in due form to one "José Higuera," who was a Mexican by birth,) of the said tract of land.

That on the 10th day of the month of December, in the year of our Lord one thousand eight hundred and thirty-five, the departmental assembly of the said department confirmed and ratified

8 the said grant of land to the said grantee by the name of "Joacquin Higuera," the said grantee being commonly known and called as well by the name of "Joacquin Higuera" as by the name of José Higuera, the true and full name of the said grantee being the name "José Joacquin Higuera."

That on the twenty-first day of the month of December in the year of our Lord one thousand eight hundred and thirty-five, the said grantee, José Joacquin Higuera, was regularly and legally placed in the judicial possession of said tract of land by the proper officer and according to the boundaries shown on the accompanying map, all which more fully appears by reference to the said original grant, map, and accompanying documents herewith filed and marked "Exhibit A."

That the said José Joaquin Higuera, from and after the said twenty-first day of December, A. D. 1835, remained in the peaceable and uninterrupted possession of the said tract of land until the year 1838, when he departed this life, having in his lifetime fully complied with the conditions in the said grant contained.

That the said grantee at the time of his death left his last will

9 and testament duly made and authenticated, in which said will one Maria Bernardo Soto (the widow of the testator) and Juan Maria Higuera (the youngest son of the testator) were the devisees, having an undivided moiety thereof, which will more fully appear by reference to said will herewith filed, marked "Exhibit B."

That in accordance with the provisions of the said will the said devisees and each of them remained in the joint possession, use and occupancy of the whole of said tract of land until the death of the said Maria Bernardo Soto, who died in the year 1840, and left her last will and testament duly made and authenticated, whereby Joacquin Higuera, Manuel Higuera, José Antonio Higuera, and Juan Maria Higuera were made and constituted the only devisees of the said moiety of the said Maria Bernardo Soto; they, the said devisees, suc-

ceeding jointly thereto and in equal proportions, all which will more fully appear by reference to the copy of the will of the said Maria Bernardo Soto, herewith filed and marked "Exhibit C."

That on the ninth day of February, A. D. 1845, one Domingo Higuera, (daughter of the said José Joacquin Higuera and Maria Bernardo Soto,) by sufficient deed of conveyance sold all her
10 right, title, and interest in and to the said tract of land to the said Juan Maria Higuera, as more fully appears by reference to the said deed of conveyance herewith filed and marked "Exhibit D."

That on the sixteenth day of May, A. D. 1850, the said Manuel Higuera and Maria Nicolasa Mesa (wife of the said Manuel) and the said José Antonio Higuera sold to Juan Higuera, by deed of conveyance duly executed, acknowledged and delivered all the right, title, and interest of the said grantors and of each of them to the said tract of land, which will more fully appear by reference to the original deed of conveyance, herewith filed and marked "Exhibit E"

That on the twelfth day of July, 1852, the said Juan Higuera, Joacquin Higuera, and one Maria Petra Higuera, (who is a daughter of the said José Joacquin Higuera and the said Maria B. Soto,) conveyed to your petitioner all their and each of their right, title, and interest in said tract of land lying west of the foot of the hills, which will more fully appear by reference to the original deed of conveyance herewith filed marked "Exhibit F."

11 That on the fourteenth day of January, 1853, the said Juan Maria Higuera conveyed to your petitioner all the right, title, and interest of him, the said Juan Maria Higuera, in the said tract of land, which will more fully appear by reference to the original deed herewith filed and marked "Exhibit G."

That there is not any conflicting claim to the said tract of land or to any part thereof, so far as is known to your petitioner.

In view of the premises, your petitioner relying upon the documentary evidence herewith filed, and upon such other evidence as may be hereafter produced in this behalf, prays that the validity of his said claim to the said tract of land may be adjudicated and determined; and that upon the final hearing hereof the right, title, interest and claim of your petitioner in and to the said tract of land, and each and every part thereof, be decreed to be valid, and that such other and further orders and decrees may be made herein as the nature of the case may require.

WALLACE & RYLAND,
Att'ys for the Petitioner.

Filed in office Feb. 26, 1853.
(Signed) GEO. FISHER, *Sec'y.*

12 *Dep. of José Castro.*

SAN FRANCISCO, *March* 1, 1853.

On this day before Com. Hiland Hall came José Castro, a witness in behalf of the claimant, Charles White, petition No. 638, and was

duly sworn, his evidence being given in Spanish and interpreted by the sec'y.

The U. S. associate law agent was present.

In answer to inquiries by the associate law agent, the witness testified as follows:

My name is José Castro, my age is forty-four years, and I reside in Monterey.

A paper is now shown me purporting to be a grant to José Higuera, dated 5th of November, 1835, to which is attached a testimonial of approval by the territorial deputation, and map, and also a testimonial of judicial possession; which paper is hereto attached and marked H. H. No. 1. I am acquainted with the handwriting and signatures of Francisco del Castillo Negrete, José Z. Fernandez, Antonio Maria Pico, Tomás Pacheco, Luis Chaboya, and Francisco Soto, and believe the signatures of the said several persons, wherever
13 they appear on said paper, to be genuine.

My own genuine signature is on said grant, and was placed there by me while I was acting in the capacity therein stated, and at the date of said paper.

Antonio M. Pico was an acting alcalde at the date of said judicial possession.

A paper is also shown me purporting to be the last will and testament of José Higuera, with a schedule thereto annexed, which paper is hereto attached, and marked H. H. No. 2.

I am acquainted with the signatures of Dolores Pacheco and Salvio Pacheco appearing on said paper, and believe them to be genuine.

José Higuera was also known by the name of Joaquin Higuera. I believe his real full name was José Joaquin Higuera.

I know the rancho called Pala. It is situated in the county of Santa Clara, about a league and a half from San José. Joaquin Higuera occupied the land and lived on it for several years previous to the grant to him before mentioned, and continued to occupy it
14 until the time of his death, and his family have occupied it since to the present time. I cannot tell the time of his death.

JOSÉ CASTRO.

Sworn and subscribed before me.

HILAND HALL, *Com.*

Filed in office March 1, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Dep. of Frederick Hall.

OFFICE OF COMMISSIONER OF LAND CLAIMS IN CALIFORNIA.

This day, before Com'r Rob't A. Thompson, came Frederick Hall, witness in behalf of claimant, Chas. White, No. 638, who, after being duly sworn, deposed as follows:

Present: C. F. Ryland, att'y for claimant; V. E. Howard, law agent, present.

Questions by claimant's att'y.

What is your name, age, and place of residence?

Answer. My name is Frederick Hall; my age twenty-seven
15 years; and my residence San José, California.

Question by same. Look upon papers marked as Exhibit E, F, and G, in case No. 638, and with the initials R. T., and herewith filed, and state what you know of their execution.

Answer. The paper marked G was executed in my presence by the grantee, Juan Maria Higuera, making his cross or mark, and I subscribed my name as attesting witness.

He also acknowledged it before me as a notary public, and the certificate and seal of office thereto attached were made by me at the time the same bears date.

Exhibit F was also executed in my presence by two of the parties thereto, to wit, Juan Maria Higuera and Maria Petra Higuera, in the same manner by making their marks, which I attested as witness, and all three of the parties acknowledged the same before me as notary public, to which I made my certificate thereon, and affixed my seal of office at the time it bears date. I know nothing of the execution of the paper marked as "Exhibit E." I have seen F. M.
Namcastle, whose name appears to a certificate of acknow-
16 ledgment in said paper with, and I believe the said certificate and the signature thereto to be in his handwriting; I also know the endorsements on said paper to be in the handwriting of J. T. Richardson, the recorder of the county of Santa Clara.

And further this deponent saith not.

FREDERICK HALL.

Sworn to and subscribed before me, this 5th day of September, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Sept. 5, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of José Noriega.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c., &c.

This day, before Com'r Alpheus Felch, came José Noriega, a witness in behalf of claimant, Charles White, No. 638, who, after being duly sworn, deposed as follows:

Mr. Fisher, secretary to the board, acted as interpreter.

Questions by Mr. Ryland, attorney for claimant.

17 1st question. What are your name, age, and place of residence?

Answer. My name is José Noriega, my age is fifty-three years, and I reside at San José, in California.

2d question. Are you acquainted with the rancho called "Pala?" If yea, please describe it.

Answer. I am acquainted with it. Is situated in the county of Santa Clara. It is bounded on the north by the Arroyo del Aguage, on the south by the rancho of Antonio Chavoya. There is a live oak tree marked with the mark of a cross on the line between the two ranchos. There is also a small creek there, but I do not know which of the ranchos it is on. The land of the Pueblo of San José bounds the said rancho on the west, and a range of hills on the east side ; I have known said rancho Pala fifteen years or more.

3rd question. Who was living on the rancho when you first knew it?

Answer. Joaquin Higuera. He lived there many years before I first knew the place.

18 4th question. What do you know of the occupation and improvement of said place?

Answer. Joaquin Higuera was the first settler on it. He built houses on it ; had a large stock of cattle and horses on it, and cultivated the land extensively. I have known the rancho for a long while, but I went there in 1844 to make a division of some property. The children of Higuera and most of his heirs have lived on the premises up to the present time. Higuera's wife died in the year 1844. Higuera himself died some time before that.

5th question. Please look on the map now shown you, being a part of a document marked A, and being also marked "H. H, No. 1." annexed to the deposition of José Castro, heretofore filed in this case, and state what you know about the location of said rancho called Pala and the adjoining ranchos.

Answer. I have examined said map, and believe it is a true representation of the land.

JOSÉ NORIEGA.

Mr. Greenhow, associate law agent, was present, but propounded no question to the witness.

19 Subscribed and sworn to before me this tenth day of November, 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office Nov. 10, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of Antonio Maria Pico.

OFFICE OF THE BOARD OF COMMISSIONERS, &c.

This day, before Com'r Alpheus Felch, came Antonio Maria Pico, a witness in behalf of claimant, Charles White, No. 638, who, after being duly sworn, deposed as follows :

The evidence of witness was given in the Spanish language, and interpreted by Mr. Fisher, secretary to the board.

Questions by Mr. Ryland, attorney for the claimant.

Answer. My name is Antonio Maria Pico; my age is forty-three years, and I reside at San José, in Santa Clara county, California.

2nd question. Are you acquainted with the rancho called Pala, in the county of Santa Clara? If yea, how long have you known
20 it, and what are its boundaries?

Answer. I know that rancho, and have known it since 1832. I gave juridical possession of it to Joaquin Higuera, in 1835, and know the boundaries. On the north it is bounded by the Arroyo del Aguage; on the south is an oak tree marked with an axe, which is the boundary line between this rancho and that of Yerba Buena, belonging to Antonio Chavoya, and the creek called Arroyo de las Alisas; on the east the height or summit of the range of hills known by the name Las Lomas de la Pala; on the west the lands of the town of San José; an oak tree was marked for a boundary on the Arroyo del Aguage, at the corner nearest to the town of San José.

The creek also is the boundary. The oak tree is at the corner or angle nearest San José.

Another oak was marked with an axe with the mark of the cross, which stands at the corner of the land on the west nearest Chaboya's land. These trees were marked by us as landmarks of the land at the time I gave juridical possession.

21 3rd question. Who lived on the land at the time you first knew it, and what improvements and stock were on the rancho?

Answer. Joaquin Higuera lived on it when I first knew it. He had a stock of cattle and horses, and houses and corrals, and fences and gardens on it at that time. He and his family lived on it from 1832 until his death, and from that time to the present his family have continued to live on it. They have continued to cultivate it all that time.

ANTONIO MA. PICO.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no questions to the witness.

Subscribed and sworn to before me this eleventh day of November, 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office Nov. 11, 1853.
(S'g'd) GEO. FISHER, *Sec'y.*

22 *Dep. of C. T. Ryland.*

OFFICE OF THE BOARD OF COMMISSIONERS, &C.

This day, before Com'r Thompson Campbell, came C. T. Ryland, a witness in behalf of claimant, Charles White, No. 638, who, after being duly sworn, deposed as follows:

What is your name, age, and place of residence?

My name is C. T. Ryland; I am twenty-six years of age, and I reside at San José.

Did you know the late Charles White; and if so, when he died, and what heirs did he leave, and what are their names?

I knew Charles White; he died about the 13th of April, 1853; he left a wife, Ellen E. White, and three children, named James T. A. White, Charles E. White, and Mary E. White, and also another child that died a few days after her father's death.

C. T. RYLAND.

Associate law agent present.

Sworn to and subscribed before me this 14th day of Nov., A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Nov. 14, 1853.

(Signed) GEO. FISHER, *Sec'y.*

23 *Dep. of José Noriega.—Case No.* 638.

UNITED STATES LAND COMMISSION,
San Francisco, Jan. 12, 1854.

On this day, before R. Aug. Thompson, commissioner, came José Noriega, a witness in behalf of claimant, Charles White, case No. 638, who, after being duly sworn, deposed as follows, his testimony being interpreted by the secretary.

Present: Claimant's att'y and U. S. ass't law agent.

Witness states his name is José Noriega; his age, fifty-three years; and residence San José, and has resided in California twenty years.

Questions by claimant's att'y.

What has been the custom in California in relation to the execution of the wills under the Mexican law so far as you know, and also your means of knowledge?

Answer. Wills were generally executed in the presence of witnesses. When it was convenient a judge was sometimes sent for the purpose of authenticating it. This was considered necessary, but when the judge could not be procured the will was executed before the witnesses alone, and such wills have always been considered as valid as if executed before the judge. I was for seven months
24 constitutional judge of San José.

Question by same. Examine the paper now shown you, marked "B," and with the initials H. H. No. 2, annexed to the deposition of José Castro, filed in this case, and state what you know of the genuineness of the signatures thereto.

Answer. I know the handwritings of Dolores Pacheco and Salvio Pacheco. I have often seen them write in 1838. Dolores Pacheco filled the office of alcalde, and Salvio Pacheco was his secretary. Their signatures on said document are genuine.

That paper appears to me to be executed in accordance with the usual mode of making wills. I think Joaquin Higuera, owner of the

ranch de Pala, died in 1838. He left four sons, Joaquin, José, Antonio, Manuel, and Juan Higuera, and six or seven daughters. I know them by sight, but did not recollect their names.

One is married to Antonio Chaboya; another, José Bernal Castro; another, who is now a widow, married Anastacio Chaboya; another, Pedro Meza. He also left a widow, who died about the year
25 1840. She made a will, of which I was the executor, and distributed the property in accordance with its provisions.

Question by same. Are Juan Higuera and José Antonio Higuera, Manuel Higuera, and Joaquin Higuera, mentioned in your last answer as sons of Joaquin Higuera, deceased, the same persons who sold a portion of the ranch of Pala to Charles White; and is Maria Petra one of the daughters of the said Joaquin Higuera, dec'd?

Answer. They are the same persons, and Maria Petra is one of the daughters of said Joaquin Higuera, dec'd.

Questions by U. S. ass't law agent.

Was it the custom in California to admit as valid a will signed before witnesses, without the presence of the judge, and without any subsequent authentication by that officer?

Answer. According to the custom in California, I would have always, as executor of a will, pursued the same course in regard to a will signed by witnesses, and without the authentication of the judge, as it if had been so authenticated.

JOSÉ NORIEGA.

26 Sworn to and subscribed before me, Jan. 12, 1854.

R. AUG. THOMPSON, *Com'r.*

Filed in office Jan. 12, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Dep. of Salvio Pacheco.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Sept.* 22, 1854.

This day came before Peter Lott, commissioner for taking testimony, to be used before the board of U. S. land commissioners, in said State, Salvio Pacheco, a witness on behalf of the claimant, Charles White, in case No. 638 on the docket of said board; and said witness, being sworn, deposed in Spanish, which was interpreted by the interpreter to the board as follows:

The U. S. associate law agent is present.

Questions by Mr. Wallace, attorney for claimant.

1st question. What is your name, age, and residence?

27 Answer. My name is Salvio Pacheco; my age, 60 years; my residence, in Contra Costa county, California.

2nd question. How long have you resided in California; and what offices have you held, if any, and at what periods?

Answer. I have lived all my life in California; was born here. I was justice of peace or alcalde in 1843; and some time previous to that I was two or three years alcalde. I was twice elected a member of the territorial deputation in Figueroa's time and in Gov. Alvarado's time I was appointed to measure the public lands of San José. In early time I acted as alcalde's secretary. I do not remember the date. I now recollect no other public employments I may have had.

3rd question. Are you acquainted with the rancho of Pala, now situated in Santa Clara county; and are you acquainted with José Joaquin Higuera, to whom said rancho was granted?

Answer. I am acquainted with said rancho, and I knew said Higuera; he died some time about 1838 or 1839.

28 4th question. Look at the document now shown you, marked "A, P, L," exhibited in this deposition, and heretofore filed in this case, Feb'y 26, 1853, purporting to be the last will of said José Joaquin Higuera, and state if you are one of the persons whose signature is thereto written.

Answer. Yes; this is my own signature and rubric on the fourth page of the document.

5th question. Was you present at the execution of said document? If yea, state who signed it in your presence.

Answer. I was present. I saw Dolores Pacheco, the alcalde, sign his name. I was at the time acting his secretary. I wrote the body of the will, and José Joaquin Higuera, the testator, and Dolores Mesa and Sebastian Batron, the witnesses, being unable to write, requested me to write their names, which I did in their presence, and they each made his mark of a cross to his name. I am not certain whether they made the marks, or I myself, at their request.

29 6th question. State what was the condition of said testator, Higuera, mentally at the time the said will was executed.

Answer. He was of perfectly sound mind and memory. He made at the time full statements of his affairs, his debts, &c. He dictated to me the will as I wrote it, and was fully capable of doing business so far as his mind was concerned; he was feeble in bodily health. I made the inventory of debts and dues, which is attached to this will, by the direction and under the dictation of said testator.

7th question. Did said Higuera leave a widow when he died? If yea, what was his name?

Answer. He left a widow named Maria Bernardo Soto. She died about the year 1840.

8th question. Look at the document now shown to you, marked "B, P. L.," and exhibited to this deposition, and purporting to be the last will of said Maria Bernardo Soto, and state who wrote it; whether you was present at its execution, and all you know of the execution thereof?

Answer. I wrote this document in the presence of said Ma-

30 ria Bernardo Soto, who was sick at the time, and ordered it to

be written as it is. I signed my name to it as a witness, at the request of the judge, José Fernandez. He signed it also in my presence; he was acting as judge, and Tomas Pacheco also signed it in my presence as a witness; these signatures are all genuine. The testatrix did not sign it. She was sick and could not write; she sent for the judge to come and make her will, and he signed it, and said it was quite sufficient to be done under his authority, without her signing it. She was of sound mind at the time, and good and perfect memory, and dictated the will as it is written here.

9th question. Are you acquainted with the laws and usages of California as they existed at the time of the execution of these two wills, which have been exhibited to you respecting the execution of wills? If yea, state them.

Answer. Higuera's will was made in 1838, and the widower's in 1840, the periods of their respective dates. Wills were usually executed before an alcalde, who was also called a judge or justice of the peace. It was sufficient if the judge was present and certi-
31 fied the will, and the signature of the testator was not necessary. The custom was to have such number of witnesses present as the judge might summon or request to come for the purpose—one or more. These two wills were executed in conformity with the laws and customs of the country at the time, in all respects. I was for some years secretary to different alcaldes, and as such I have written a number of wills for different persons. It was one of the duties which devolved on me as such secretary, when I was present.

SALVIO PACHECO.

Subscribed and sworn to before me, Sept. 22, 1854.

PETER LOTT, *Com'r, &c.*

Filed in office, Sept. 22, 1854.

(Signed.) GEO. FISHER, *Sec'y.*

32 Juzgado Constit'l de S. José Guadalupe, Año de 1835.

A.

Grant, map, confirmation and judicial possession.

Espediente instruido p'a medir y dar posesion de un sitio de Ganado mayor al C. José Joaq'n Higuera del terreno conocido con el nombre de Pala.

Juez el alc'l Constit'l de dicho Pueblo.

Asistencia:

José Z. Fernandez, y

Tomas Pacheco.

H. H. No. 1, *ann'd to the deposition of José Castro.*

Sello primero—Seis pesos.

Habilitado provicionalmente por la administracion de la aduana marítima de Monterey de la ata California, para los años de mil ochocientos treinta y cuatro y ochocientos treinta y cinco.

FIGUEROA. A. RAMIREZ.

33 [SEAL.] José Castro, primer vocal de la Exma. diputacion territorial i gefe politico interino del territorio de la Alta California.

Por cuanto José Higuera Mejicano pr. nacimiento á pretendido pa. sa beneficio personal i el de su familia el terreno conocido con el nombre de *Pala* practicadas las diligencias i aberiguaciones consernientes segun lo dispuesto pr. leyes y reglamentos usando de las facultades ql. me son conferidas en decreto de este dia i á nombre de la nacion Mejicana é venido en concederle el terreno mencionado *Pala* declarandole la propiedad de el pr. las presentes letras á reserva de la aprovacion de la Exma. diputacion territorial bajo las condiciones siguientes.

1a. Que se sometera à las ql. estableciere el reglamento ql. se ha de formar pa. la distribucion de terrenos baldios i ql. entre tanto ni el agraciado ni sus herederos podran dividir ni enagenar el ql. se les adjudica, imponer senso. vinculo ipoteca franza ni otro gravamen aunque sea pr. causa piadosa ni pasarlo á manos muertas.

2a. Podrá cercarlo sin perjudicar las travecias, caminos y
34 servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo ql. mas le acomode peso dentro de un año fabricara casa y estará abitada.

3a. Solicitara del juez respectivo ql. le de la posesion juridica en virtud de este despacho pr. el cual señalaran los linderos en cuyos limites pondran á mas de las mohoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de ql. se hace mencion es un sitio de ganado mayor segun esplicá el diseño ql. corre en el espediente. El ql. diere la posesion juridica lo hará medir conforme á ordenanza quedando el sobrante ql. resulte á favor de la nacion pa. los usos convenientes.

5a. Si contraviniere à estas condiciones perderá su derecho al terreno i ser á denunciable pr. otro.

En consecuencia mado ql. sirviendole de titulo el presente i teniendore pr. firme i valedero se tome razon de él en el libro ql. corresponde y se entregue al interesado pa. su resguardo i demas fines. Dado en Monterey, á cinco de Noviembré, de mil ochocientor treinta y cinco.

JOSE CASTRO,
35 *Srio Fco del Castillo Negrete.*

Dros 10 ps.

Queda tomada razon en el libro ql. corresponde á fojas ochento y dos i señalado con el numero ochenta ql. obra en la secretaria de mi cargo.

MONTEREY, 5 *Nobre de* 1835. CASTILLO.

Sello tercero—Dor reales.

Habilitado provicion almente por la administracion de la aduana maritima de Monterey, de la alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientso treinta y cinco.

CASTRO. ANGEL RAMIREZ.

Testimonio.

[SEAL.] Se aprueva la concesion hecha al C. Joaquin Higuera del terreno nombrado Pala concedido en cinco de Noviembre de mil ochocientos treinta y cinco sujetandose á las condiciones qe. se estipularen i de pagar el canon en caso de pertenecer á aquella poblacion.

Monterei cinco de Diciembre de mil ochocientos treinta i cinco.

SALVIO PACHECO.

Monterey, Deciembre diez de mil ochocientos treinta i cinco.

36 En sesion de este dia aprobó la E. diputacion la proposicion del dictamen antecedente disponiendo vuelva el espediente al S. gefe poblico pa. los fines consiquientes.

JUAN B. ALVARADO, *V. S.*

Monterie, Diciembre once de mil ochocientos treinta i cinco.

En vista de la aprovacion otorgada el dia diez del presente por la E. diputacion territorial librese testimonio de ella i de este á la parte del C. Joaquin Higuera, en confirmacion á la concecion del terreno conocido con el nombre de Pala qe. obtuvo en cinco de Noviembre, del presente año. El S. D. José Castro, gefe politico interino de territorio de la alta California i vocal de la E. diputacion territorial asi lo mando decreto i firmo de lo qe. doi fé José Castro.

FCO. DFL CASTILLO NEGRETE,
Secretario.

Deciembre, enmedado.

Concuerda á la letra con su original que queda archivado en esta secretaria del gobierno politico qe. está á mi cargo en el legado de espedientes sobre terrenos aprovados pr. la E. diputacion al que me remito.

Monterey, Deciembre, once de mil ochocientos treinta y cinco.

FCO. DEL CASTILLO NEGRETE.

Dros 4 ps.

(Here follows map, page 36.)

37 Sello Tercery. Dos Reales.

Habilitado provicionalmente por la administracian de la aduana maratima de Monterey de la alta California, para los años de mil ochocientos treinta y cuatry y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

SEÑOR ALC'E CONSTITUCIONAL: El ciudadano José Joaquin Yguera ante U. mas baya lugar en derecho digo; que habiendose me concedido por la exmo. diputacion territorial el terreno conocido con el nombre de Pala, segun lo acredita el titulo que respetuosamente acompaño, y diseño que le signe, pido á V se sirva darme la posecion juridica de él, que es de un sitio de ganado mayor, con las formalidades de la ley, para evitar ql. perjudique á mis circunvecinos ó perjudiquen mis intereses; por tanto A. V. Suplico se sirva proveer como fido pr. ser de justicia ql. imploro y piro con lo necesario &c.

A ruego del into. pr. no saber.

JOSÉ Z. FERNANDEZ.

38 S. José de Guadalupe diez y seis de Dece. de 1835.

Por presentada esta peticion con los documentos que espresa citense á los circumbecinos y bagase informacion de identidad, vista de ojos y reconocimiento de dichastierras. El C. Antonio Ma. Pico, alcalde constitucional del Pueblo de S. José de Guadalupe actuando por receptoria, con dos tertigos de asistencias á falta de escribano publico, asi lo proveyó, man.

Sello tercero.—Dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

Dó y firmó con los de su asistencia.

ANTONIO M'A PICO.

Assist'a: JOSÉ Z. FERNANDEZ.

En el espresado pueblo á los diez y seis dias del mismo mes y año el alcalde constitucional con los de su asistencia, para proceder á la informacion de identidad que espresa el anto de su uso, hizo
39 comparecer al C. Sebastian Peralta en su persona que conocemos, vecino de este pueblo de oficio Labrador, casado, al cual se le recibió juramento que hizo por dios nuestro Sor y la señal de la Santa Cruz por el que prometió decir verdad y habiendolo sido sobre el conocimiento que tenga de las tierras y parages, terminos y linderos pertenecientes al rancho nombrado de Pala dijo, qe. hace mas de diez años es vecino de esta jurisdiccion y sabe que las tierras por que se le preguntan han pertenecido al C. José Joaquin Yguera y tiene por linderos conocidos un roblar y el montecito alto, las cuales ha visto y reconocido varia veces y que desde que las posee dicho higuera las ha labrado y cultivado, pastando en ellas sus ganados y que para prueva de lo que tiene dicho esta pronto á ir á dichas tierras con el presente alcalde y señor larle los parages, terrenos y linderos donde llegan; que lo que lleva dicho es la verdad por el juramento que tiene hecho en que se afirmó y ratifició leida que le fué esta de-

claracion diciendo ser de edad de cuarenta años y las grals
40 no le tocan y ly firmò con el presente alcalde y los de su asistencia.

ANTONIO M'A PICO.

Asist'a : JOSÉ Z. FERNANDEZ.

Asist'a 1a : TOMÁS PACHECO,
SEBAST'N PERALTA.

Ynmediatamente yo el mencionado alcalde con los de mi asistencia, hice compareer al C. Luis Chaboya, en su persona que conocemos, vecino de esta jurisdiccion, de oficio labrador, casado al cual se le recibio piramento segun costumbre, por el cual prometio decir verdad y siendo preguntado por el conocimiento de las tierras y parages terminos y linderos pertenecientes al rancho nombrado de pala, dijo; que hace mas de diez años es vecino de esta jurisdiccion y sabe que las tierras pertenecientes al espresado rancho, han sido poseedas por el C. Joaquin Higuera y tiene por linderos conocidos el montecito alto y un roblar, las cuales ha visto y rconocido varirs veces y que desde que las posee dicho Higuera las ha labrado y pastado
41 en ellas sus ganados; y que para prueva y conocimiento de cuanto tiene dicho está pronto á ir á dichas tierras con el presente alcalde y señalarle los parajés, terminos y linderos donde llegan y que esto que lleba dicho es la verdad a cargo del piramento prestado en que se afirmò y calificó, leida qe. le fué esta declaracion, deciendo ser de edad de cuarenta y cinco años que las generales no le tocan y lo firmò con el presente alcalde y los de su asistencia.

LOUIS CHABOYA.
TOMÀS PACHECO.

ANTONIO MA. PICO, *Asist'a.*
JOSÉ L. FERNANDEZ, *Asisst'a.*

Yncontinenti comparecio el C. Dolores, mesa en su persona que conocemor, vevino de esta jurisdicion, de oficis labrador, casado al ual se le recibio jurramento segun costumbre, por el que prometió decir verdad y siendo preguntado por el conocimiento de las tierras parajes, terminos y linderos pertenecientes al rancho nombrado de pala dijo: que es nativo de este pueblo, y sabe que las tierras per tenacientes al espresado rancho, han sido poseidas por el
42 C. José Joaquin, higuera y tine por linderos conocidos dos arroyos, uno hacia el norte y otro al sur el Montecito alto y la cordillera de lomas que corer de norte á sur las cualer ha visto y reconocida varias veces y desde que las posee dicho Higuera las ha abrado y pastado en ellas sus ganador: y que para prueva y conocimiento de cuanto tiene dicho esta pronto á ir á dichas tierras con el presente alcalde y señalar le los parages, terminos y linderos donde legan; que lo que tiene dicho es la verdad á cargo del juramento prestado en qe. se afirmó y ratifició leida que le fué esta esposicion diciendo ser de edad de sesenta y siste años, y que los generales de

la ley no le tocan, no firmando por no saber, pero lo verificó el alcalde con los de su asistencia.

ANTONIO MA. PICO.

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.

En el repetido pueblo á los diez y ocho dias del espresado mes y año de cobraron boletas de comparendo á los colindantes C. C.
43 Nicolas Berreyesa y Antonio Chaboyo para que comparesca en el rancho titulo de Pala mañana diez y nueve del corriente, y enterados ambos de este auto, respondieron lo oyen y se dan por citados; esto respondieron y firmo Nicolas Berreyesa no verificandolo Chaboya por no saber.

ANTONIO MA. PICO.

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: ANTONIO CHABOYA, por no saber firmar izo la señal de la cruz.
NICOLAS BERREYESA.
Asist'a: TOMAS PACHECO.

Estando en el campo en el parage que le llaman de Pala terminos del Puebla de S. José de Guadalupe en diez y nueve de Dicembre de mil ochocientos treinta y cinco yo el alcalde constitucional actuando por receptoria con dos testigos de asistencia á falta de escribano publico, los testigos por mi ecsaminados presente el dicho José Joaquio Higuera, C. C. Nicolas Berreyesa y Antonio Chaboya sus circumbecinos, procedi á ver y reconecer las tierras de dicho rancho; y para su mayor claridad puerto á caballo en compañia de todas los partes y testigos referides mandé á los susodichos me señal-
44 ares los parages terminos y linderos de ellas segun las señales que han declarado en sus deposiciones y en su conformidad guiaron á la parte del N. hasta llegar al arroyo del aguague, de ahi se procedio el reconcoimiento y vista de ojos hacia el O. camiando por la orilla de dicho arroyo hasta llegar cerca dol Montecito alto y ser termino y lindero delas espresados tierras de Pala: desde dicho parage se continuo dicha vista de ojos canun ando hacia el S. hasta llegar á un roblar, termino y lindero de las susodechas tierras, desde donde señalaron la cordillera de lomas q. miran al O. per ultimo lindoro de las men cionados tierras; cuyos parages, yo el alcalde constitucional vi y reconoci con los de mi asistencia, testigos espresados y papeles presentados y cotejado dicho reconocimiento con ellos halle ser cierta la identificacion de las mencionados tierras, segun y como lo declaran dichos testigos y para que constelo pongo per diligencia y lo firme con los de mi asistencia, y los demas que supieron doy fé.

ANTONIO MA. PICO.
SEBAST'N PERALTA.
LUIS CHABOYA.

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.

En el mismo dia mes y año yo el alcalde constitucional diyo para proceder á las medidas contenidas en estos autos mando se notifique á dicho C. José Joaquin Higuera, de que los medidores nombrados son los C. C. Rafael Soto y Agustin Alvisu por inteligentes en materia de medidas, y en su consecuencia dijo lo oys y que conviene en dicho nombramiento, por lo cual mandó dicho alcalde se notificase á los espresados medidores, nombrado el dia veinte y uno del corriente para proceder á las medidas de dichas tierras y en consecuencia mandó se diere á saber á dichos medidores, para que parescan acepten y juren en debida forma, y para que conste lo firmo con los de mi asistencia.

ANTONIO MA. PICO.

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.

Ynmediatemente comparecieron los C. C. Rafael Soto y
45 Agustin Alvisu medidores nombrados y hecho saber el auto de su uso dijeron aceptan el encargo suso dicho, y en su vista juraron por dos nuestro Señor y la Señal de la Santa Cruz de que usaron bien y fielmente el encargo referido á todo su leal saber y entender y que haran dichas medidas fiel y legalmente como es de sus obligaciones sin frandeni engaños en contra ninguna de las partes esto respondieron y firmaron doy fé.

ANTONIO MA. PICO.

Asist'a: JOSÉ Z. FERNANDEZ.
TOMAS PACHECO.
FRAN'CO SOTO.
AGUSTIN ALVISU.

En seguida se hizo saber á los interesados y medidores concurran el dia veinte y uno del corriente al parage nombrado de Pala para procedar á los medidas de dichas tierras é impuestos todos de este auto, dijeron lo oyen y se dan por citados, firmando los que supieron para constancia doy fé.

ANTONIO MA. PICO.
FRAN'CO SOTO,

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.
SEBAST'N PERALTA.

47 Por no sabor firmar ase la señal de cruz—
\+ LUIS CHABOYA.

En el rancho titulado de Pala á veinte y uno de Diciembre del año de mil ochocientos treinta y cinco presente el C. José Joaquin Higuera y circumbecinos á dichas tierras hice comparecer ante mi y los de mi asistencia á los C. C. Rafael Soto y Agustin Alvisu unidores nombrados, á los cuales mandé encerar un condel de ilo y midon cincuenta varas con vara de medir de cuatro palmos castellanos y con efecto los suso dichos en mi presencia midieron un cordel torcido y encerado y bien tirado con una vara Mejicana sellada en toda forma hasta el

numero de cincuenta varas; la cual medida se hizo fiel y legalmente á vista, ciencia y paciencia del interesado y circumbecinos en cuya atencion mando se poega por diligencia.

ANTONIO MA. PICO.

Asist'a: JOSE Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.
SEBAST'N PERALTA.
LUIS CHABOYA.

48 Estando en el campo y tierras pertenecientes al rancho de Pala, hoy veinte y uno de De'c'e de mil ochocientos treinta y cinco, yo el alcalde constitucional del pueblo de S. José de Guadalupe actuando por receptoria con dos testigos de asistencia á falta de escribano publico presete el C. Rafael Soto y Agustin Alvisu medidores nombrados, mandé precediesen á la medida de un sitio de ganado mayor que toca y pertenece al rancho de Pala segun el titulo y diseño presentados en cuyo obedicimiento, habiendo buelto á meder y reconocer el cordel dieron principio á dicho medida desde el sobar que mira hacia el N. caminando por este rumbo hasta llegar al rincon del arroyo del aguage donde se midieron cincuenta cordelas que dando dicho arroyo de lindero; desde alli se siguió la medida en linea recta hacia el O. hasta llegar á las tierras de labor de dicho rancho, donde encontrandose un roble quedó señalado para cauerdo de que alli pondria una mohonera y se midieron cuarenta cordelas; desde este parage se tomo el rumbo hacia el S. atravesando por la Liguna del Socaire, arroyuelo que nace de esta mismo hasta llegar
49 à un roblar cayo primer roble señalo Higuera donde deberá colocar otra mohonera y se midieron ciento diez cordeles; de este sitio se siguio hacia el e caminando por la orilla del arroyo de los Alisos hasta llegar al pie de la cordillera de Lomar qe. corren de N. á S. á espaldas del Solar, vertientes al O. y no habiendo mas de treinta y siete cordeles se completo el sitio de ganado mayor que se le concedió ol repetido Higuera con la Lomeria referipa, por haber lo pedido el interesado y no haber quién la reclamase ; de manera que el referido sitio de ganado mayor de que consta el rancho de Pala, per teneciente ol C. José Joaquin Higuera, forma un cuodro de veinte mil varas Castellanas y regulado por dichor medidores declararm estar el repetido C. José Joaquin Higuera enterado de las tierras que le corresponden a su rancho segun el titulo y diseño que obra á la cabeza deeste espediente sin que se perjudicase á tercero ; por lo cual arrancó dicho Higuera varias ramas y yervas araojandolas hacia los cuatro vientos en señal de ser legal y legitima posesion ; en tal
50 estado el C. alcalde que para perma nenua y claridad de los linderos que van espresados hiciere á su costa y mencion unas mohoneras de piedra y cal en altor de mas de vara para que entodo tiempo conste, se observe y guarden por terminos y linderos de sus tierras por los demas circumbecinos de ellas ; y de haberse ejecutado dichas medidac quieta y pacificamente sin contradiccion de persona al guna lo pidiõ por testimonio ; y yo el alcalde constitueional del Puebla dec Josè Gnadalupo actuando por receptoria á falta de escri-

bano publico, lo doy de haber posado como dicho es y que las espresadas medidas han sido hechar à todo el leal saber y entender de los medidores ; segun depusieron, sin dols fraude m'engaño en contra de ninguna persona, y para mas seguridad ratificaron el piramento que tienen hecho y lo firmaron con el repetido alcalde, los de su asitlencia y las demas personas que supieron y se hallaron presentes.

ANTONIO MA. PICO.

Assist'a: JOSÉ Z. FERNANDEZ.
Asist'a—
TOMAS PACHECO.
SEBAST'N PERALTA.
51 AUGUSTIN ALVISU.†
LUIS CHABOYA.
FRAN'CO SOTO.

En virtud de hallarse concluidas estas diligencias conforme á la ordenanza de la materia entreguense originales á la parte del C. José Joaquin Higuera con los documentos que presentó para los usos que le convenga. El C. Antonio Maria Pico, alcalde constitucional del pueblo de S. José de Guadalupe, actuando por receptoria con dos testigos de asistencia á falta de Escribano publico, asi lo provejó mandó y firmó hoy veinte y uno de Diciembre de mil ochocientor treinta y cinco.

ANTONIO MA. PICO.

Asist'a: JOSÉ Z. FERNANDEZ.
Asist'a: TOMAS PACHECO.

Filed for record, 10 o'clock a. m., 6 July, 1850.

J. T. RICHARDSON,
Recorder of Santa Clara County, Cal.

Recorded in book of deeds A, pages 213, 214, 215, 216, 217, 218, 219, and 220.

J. T. RICHARDSON,
Recorder S. C. County.

Filed in office Febr'y 26, 1853.

GEO. FISHER, *Sec'y.*

52 *Translation of the grant, confirmation, and judicial possession.*

First seal—Six dollars.

Provided provisionally by the maritime custom-house of Monterey of Upper California for the years one thousand eight hundred and thirty-four and one thousand eight hundred and thirty-five.

FIGUEROA.
A. RAMIREZ.

José Castro, speaker of the most excellent territorial deputation, and governor ad interim of the Territory of Upper California.

Whereas José Higuera, a Mexican by birth, has asked for, his personal benefit, and that of his family, the land known by the name of Pala, having performed those duties and investigations concerning it, in accordance with the laws and regulations, in use of the faculties conferred on me, in decree of this day, and in the name of the Mexican nation, I have determined to grant him the land mentioned Pala, declaring it his property by these present letters, with the reservation of the approbation of the most excellent territorial
53 deputation, under the following conditions:

1st. That he will submit to the regulations which may be made for the distribution of the public lands, and that within such time neither the party favored nor his heirs shall divide nor alienate what is adjudged them, nor impose toll, nor give it in security, nor place any incumbrance upon it, although it may be for pious purposes, nor pass it in mortmain.

2d. He may enclose it, without injury to the paths or public roads and uses; he shall enjoy it freely and exclusively, destining it to such use and cultivation as shall be most convenient to him, but within a year at most he shall build a house, and it shall be inhabited.

3rd. He shall solicit of the proper judge that he give him judicial possession in virtue of this dispatch, by which he mark out the lines, in which limits there shall be put, besides the landmarks, there shall be put some fruit trees or forest ones of utility.

4th. The land of which the donation is made is one square
54 league, according to the diagram which accompanies these documents; the judge who gives the possession, measure it according to the ordinances; the overplus which results remaining for the convenient use of the nation.

5th. If he contravene these conditions, he shall lose his right to the land, and it may be denounced by another.

In consequence, I command that these presents shall serve him as a title, and holding it firmly and validly; a copy shall be taken in a proper book, and it shall be delivered to the party interested for his security, and other purposes.

Given in Monterey the fifth day of November, one thousand eight hundred and thirty-five.

JOSÉ CASTRO.
FR'CO DEL CASTILLO NEGRETE.

Remains taken a copy in the corresponding book to pages eighty two, and marked with the number eighty, which exists in the office of secretary of the government under my charge.

Monterey, Nov'r 5th, 1835.

(Signed) CASTILLO.

55 Third seal—Two reals.

Provided provisionally by the administration of the maritime custom-house of Monterey, Upper California, for the years one thousand eight hundred and thirty-four and one thousand eight hundred and thirty-five.

(Signed) CASTRO.
ANGEL RAMIREZ.

Testimony.

The concession made to citizen Joaquin Higuera of the land named Pala, granted on the fifth of November, one thousand eight hundred and thirty-five, is approved, subjecting him to the conditions therein stipulated, and to pay taxes (censos) in case it belongs to that population.

Monterey, fifth December, one thousand eight hundred and thirty-five :

SALVIO PACHECO.

Monterey, December the tenth, one thousand eight hundred and thirty five :

In session of this day the most excellent deputation approves the proposition in the foregoing decree, ordering the return of the documents to the governor for his further action.

JUAN B. ALVARADO, *V. S.*

Monterey, December eleventh, one thousand eight hundred
56 and thirty-five.

In view of the approval of the tenth inst., by the excellent territorial deputation, extend testimony of it and of this decree to the citizen Joaquin Higuera, in confirmation of the concession of the land known by the name of Pala, which he obtained on the fifth of November of the present year.

Present : El S'or Don José Castro, governor ad interim of the Territory of Upper California and speaker of the excellent territorial deputation, thus commands, decrees, and signs, of which I give faith.

JOSÉ CASTRO.
FR'CO DEL CASTILLO NEGRETE,
Secretary.

In accordance to the letter with the original which remains archived in the secretary of the government office, which is in my charge in the package of documents approved by the excellent deputation who remitted it to me.

Monterey, December the eleventh, one thousand eight hundred and thirty-five.

FR'CO DEL CASTILLO NEGRETE.

Fees, $4.

57 Third seal—Two reals.

Provided provisionally by the administration of the custom-house of Monterey, Upper California, for the years one thousand eight hundred and thirty-four and one thousand eight hundred and thirty-five.

CASTRO.
ANGEL RAMIREZ.

To the constitutional alcalde :

The citizen José Joaquin Higuera presents himself before you as he best can in right, and says that having granted to me by the most excellent territorial deputation the land known by the name of Pala, according to the titles which respectfully accompanies and map which follows, I ask your worship that you will be pleased to give me judicial possession of the same, which is one square league, with the fomalities of the law, that I may avoid injuring my adjoining neighbors or my own interests, for which, A. V., I supplicate that you will be pleased to approve what is asked as being justice, which I implore and swear it to be necessary, &c.

As the party interested does not know how to write, I sign for him.

JOSÉ Z. FERNANDEZ.

58 San Jose de Guadalupe, *sixteenth day of December*, 1835.

By the presentation of this petition with the documents expressed, I will issue citations to the adjoining neighbors, and take information of identity sight of the eyes and examination of said lands. The citizen Antonio Maria Pico, constitutional alcalde of the Pueblo of San José Gde, with two assisting witnesses for want of a notary public, thus approves, commands, and signs, with these assisting.

ANTONIO M'A PICO,

Assisting: José Z. Fernandez.

Third seal—Two reals.

Provided provisionally by the administration of the maritime custom-house of Monterey, Upper California, for the years one thousand eight hundred and thirty-four and one thousand eight hundred and thirty-five.

CASTRO.
ANGEL RAMIREZ.

In the aforesaid pueblo, the sixteenth day of the same month and year, the C. alcalde constitutional, with his assisting witnesses,
59 in order to proceed with the information of identity which is expressed in the foregoing act, was made to appear the C. Sebastian Peralta, whom we know in person, a citizen of this pueblo, by profession a laborer, married, who, being sworn by God our Lord and the sign of the holy cross, by which he promised to speak the truth, and having been asked as to his knowledge of the lands and places, boundaries and lines, belonging to the rancho named *Pala*, he

said that it is more than ten years that he is a resident of this jurisdiction, and he knows that the lands about which is questioned has belonged to C. José Joaquin Higuera, and they have for lines known the oak grove and (montecito alto) high thicket, which he has seen and examined many times; and since the said Higuera has possessed them he has cultivated them and pastured thereon his cattle; and for proof of that, he has said he is ready to go to said lands with the present alcalde and show him the places, lands, and where the boundaries reach; that what he said is the truth by the oath which he has taken and which he affirms and ratifies, after this declaration was read to him, saying he is forty years of age; that he has no
60 interest in the case, and he signs with the present alcalde and his assistance.

ANTONIO M'A PICO.
SEBASTIAN PERALTA.

Ass't: JOSÉ Z. FERNANDEZ.
Ass't: TOMAS PACHECO.

Immediately I, the aforementioned alcalde, with those of my assistance, caused to appear before me the C. Louis Chaboya, whom we personally know to be a citizen of this jurisdiction, by profession a laborer, the head of a family, to whom we administered the oath according to custom, by which he offered to speak the truth; and being questioned as to his knowledge of the lands and places, boundaries and lines, belonging to the rancho named Pala, said that for more than ten years he is a citizen (vecino) of this jurisdiction, and he knows that the lands belonging to said rancho have been in possession of the C. Joaquin Higuera; and it has for known lines the high thicket (montecito alto) and oak grove, which he has seen and examined various times; and since the said Higuera has possessed them
61 he has cultivated them and pastured thereon his cattle; and for proof and knowledge of what he has said, he is ready to go to said lands with the present alcalde and show him the places, boundaries and lines, and where they reach; that what he has said is the truth under the obligation of the oath which he has taken; which declaration, after being read, he affirms and ratifies, saying he is forty-five years old; that he has no interest in the case, and he signs with the present alcalde and those of his assistants.

ANTONIO M'A PICO.
LUIS CHABOYA.

Assistants: JOSÉ Z. FERNANDEZ.
Ass'ts: TOMAS PACHECO.

At the same time appeared the C. Dolores Mesa, who is personally known to us, (vecino,) resident of this jurisdiction, by profession a laborer, and head of a family, who, being sworn according to custom, by which he promised to speak the truth, and being questioned as to his knowledge of the places, boundaries, and lines belonging to the rancho named the Pala, said he is a native of this pueblo, and
62 knows that the lands belonging to said rancho have been in

possession of the C. José Joaquin Higuera, and it has for known lines two creeks, one at the north and another at the south; the montecito alto (high thicket) and the tops of the hills, which runs from north to south, which he has seen and examined various times; and since the said Higuera has possessed them he has cultivated them and pastured thereon his cattle; and in proof of what he has said, he is ready to go to said lands with the present alcalde, and mark out the places, boundaries, and lines, and where they reach; that what he has stated is the truth under the obligations of the oath which he has taken, and which he affirms and ratifies, after being read to him as his declaration, saying he is sixty-seven years of age, and has no interest in the present case; he does not sign, as he does not know how, but it was done by the alcalde and those of his assistants.

ANTONIO M'A PICO.

Assist's: JOSE Z. FERNANDEZ.
TOMAS PACHECO.

63 In the aforesaid pueblo, the eighteenth day of the expressed month and year, were issued citations to appear to the citizens Nicholas Berreyesa and Antonio Chaboya, the adjoining neighbors; that they appear to-morrow, the nineteenth instant, on the rancho named Pala; and both of the parties to this act answered that they heard and acknowledged themselves as cited; this they answered, and Nicholas Berreyesa signs, but Chaboya does not, as he does not know how.

ANTONIO M'A PICO.

Ass'ts: JOSE Z. FERNANDEZ.
TOMAS PACHECO.
ANTONIO CHABOYA, by not knowing how to write, makes the sign of the cross †.
NICOLAS BERREYESA.

Being in the plain of the place called the Pala, the boundaries of the Pueblo de San José de Gde, on the nineteenth day of December, one thousand eight hundred and thirty-five, I, the constitutional alcalde, acting in due form with two assisting witnesses for want of a notary public, the witnesses examined by me being present, also José Joaquin Higuera, the citizens Nicholas Berreyesa and Antonio Chaboya, his adjoining neighbors, we proceeded to see and
64 examined the lands of said rancho; and for more clearness, we put all the party in company on horseback, together with the aforesaid witnesses, which latter we ordered to mark out the places, boundaries, and lines of the same, according to the marks they had given in their depositions, and, in accordance therewith, they guided us to the north until we reached the Arroyo del Aguage; from there they proceeded with the examination and (Vista de Ojos) towards the west by the banks of said arroyo, until we reached near the montecito alto, (high thicket,) to be a boundary and line of said lands of *Pala;* from said place they continued said (Vista de Ojos) towards

the south until they reached the (roblar) oak grove, to be a boundary and line of said lands; from where they pointed out the hills which faces towards the west for the last line of said lands, which places I, the alcalde constitutional, saw and recognized with those of my assistants and witnesses forementioned and papers presented and diligently compared, after which we find the identification to be certain of the aforesaid land according to the declaration of the said witnesses.

65 In testimony of which, I note this as accomplished, and sign with those of my assistance and the others who know how.

I give faith.

ANTONIO MA. PICO.

As'ists: TOMAS PACHECO.

As'ists:

JOSE Z. FERNANDEZ.
SEBASTIAN PERALTA.
LOUIS CHABOYA.

On the same day, month, and year, I, the constitutional alcalde, said that in order to proceed to the measurement contained in these acts of command, that notice be given to the C. José Joaquin Higuera, that the measures named are the citizens Rafael Soto and Agustin Alviso, as intelligent in the art of measuring, and in consequence he answered that he heard and agreed to the naming of them; whereupon it was commanded by said alcalde that notice be given to said measurers, naming the twenty-first inst., to proceed with the measurement of said lands, and, in consequence, commanded that notice be given to said measurers that they should appear, accept, and be sworn in due form.

In testimony of which, I sign with those of my assistants.

66 ANTONIO MA. PICO.

Ass'ts:

JOSE Z. FERNANDEZ.
TOMAS PACHECO.

Immediately appeared the citizens Rafael Soto and Agustin Alviso, measurers named, who, being made acquainted with their duty, said they accepted the charge, and in view of which they swore by God our Lord, and the sign of the holy cross, that they would use well and faithfully the duty encharged to them to the best of their knowledge and understanding, and that they would make said measurement faithfully and legally, according to their obligations, without fraud or deceit, against any of the parties. Thus they answered and signed.

I give faith.

ANTONIO MA. PICO.
AGUSTIN ALVISO.

Ass'ts:

JOSE Z. FERNANDEZ.
TOMAS PACHECO.
FRAN'CO SOTO.

307

Following I made known to the parties interested and measurers that they meet the twenty-first inst., at the place named Pala,
67 to proceed to the measurement of said lands; and all being acquainted with this act, they answered that they heard and acknowledged being cited, those signing who knew how.

In testimony of which, I give faith.

ANTONIO MA. PICO.
FRANCO. SOTO.

Assist's:
JOSE Z. FERNANDEZ.
THOMAS PACHECO.
SEBASTIAN PERALTA.
LOUIS CHABOYA.
(Por no saber firmar ase la señal de cruz.)

In the rancho named Pala, the twenty-first day of December, one thousand eight hundred and thirty-five, being present the citizens José Joaquin Higuera and adjoining neighbors to said land, I made to appear before me and those of my assistants the citizens Rafael Soto and Agustin Alviso, measurers named, whom I commanded to wax a line of thread and measure fifty varas with a measuring vara of four spans Spanish; and with effect, the forementioned, in my presence, measured a line, twisted and well stretched, with a Mexican vara, sealed in due form, until they measured the number
68 of fifty varas; which measurement was made faithfully and legal, in view of science and patience of the parties interested and adjoining neighbors.

In testimony of which I command that it be noted as accomplished.

ANTONIO MA. PICO.
SEBASTIAN PERALTA.
LUIS CHABOYA.

Assist's:
JOSE Z. FERNANDEZ.
TOMAS PACHECO.

Being in the plains and lands belonging to the rancho de Pala today, twenty-first of December, one thousand eight hundred and thirty-five, I, the alcalde constitutional of the Pueblo de San José de Guadalupe, acting in due form, with two assisting witnesses for want of a notary public, being present the citizens Rafael Soto and Agustin Alviso, measurers named, I commanded that they proceed to the measurement of sitio de ganado mayor, square league, which is called for, and belongs to the rancho of Pala, according to the title and map presented; in obedience to which, having returned to measure and examine the line, they commenced the said measurement
69 from the lot which faces towards the north, walking in that direction until they reached the corner of the Arroyo del Aguage, where there was measured fifty cordels, said Arroyo remaining the line; from there they followed the measurement in a straight line towards the west until they reached the sewing lands of said rancho, where meeting an oak tree which remained marked, to recol-

lect that here was to be put a landmark, and there was measured forty cordels; from this place they took a course towards the south, passing by the Laguna del Socaire Arroyo lands, which rises from this same, until they reached an oak grove, the first of which Higuera marked, where he shall place another landmark, and there was measured one hundred and ten cordels; from this place they continued towards the east, walking on the banks of the Arroyo de las Alisas, Sycamore creek, until they arrived at the foot of the range of hills which runs from north to south.

A espaldas del solar vertientes als., and there was not more than thirty-seven cordels, which completes the (sitio de ganado mayor) league square which was granted to the forementioned Higuera, with the hills referred to by having been asked for by him, and
70 there was no one to claim them; consequently the aforesaid sitio of large cattle which comprises the rancho of Pala, belonging to the C. José Joaquin Higuera, runs a square of twenty thousand varas Spanish measure, and regulated by said measurers, declaring the said José Joaquin Higuera to be within the lands which corresponds to his rancho according to the title and map which begins at the head of these documents, without injury to a third party; upon which the said Higuera pulled various roots and herbs, throwing them towards the four winds, as a sign of his legal and legitimate possession; at this time the C. alcalde, for permanence and clearness of the lines which are before expressed, that he make at his cost some landmarks of lime and stone of more than a vara in height, that they might in all time witness, that it be observed and guarded as boundaries and lines of his lands by the adjoining neighbors; and after having effected the said measurement quietly and pacifically without the contradiction of any person, he asked it in testimony, and I, the constitutional alcalde of the Pueblo de San José de Guadalupe,
71 acting in due form with two assisting witnesses, for want of a notary public, certify that the foregoing acts were performed before me, and that the said measurement have been made to the best knowledge and understanding of the aforesaid measurers according to (defusion,) without fraud or deceit against any person, and for more security they ratified the oath which they had made, and they signed with the aforesaid alcalde and those of my assistants and other persons who know how and were present.

ANTONIO MA. PICO.
FRANCO. SOTO.
AGUSTIN ALVISO.

Assist's: JOSE Z. FERNANDEZ.
Assist's: TOMAS PACHECO.
SEBASTIAN PERALTA.
LUIS CHABOYA.

In virtue of having concluded these duties according to the ordinances of the matter. I deliver the originals to the citizen José Joaquin Higuera, with the documents which he presented, for such purposes as he may determine.

72 The C. Antonio Ma. Pico, constitutional alcade of the Pueblo de San José de Guadalupe, acting in due form, with two assisting witnesses, for want of a notary public. Thus I approve, command and sign this twenty-first day of December, one thousand eight hundred and thirty-five.

ANTONIO MA. PICO.

Assist's: JOSE Z. FERNANDEZ.
Assist's: TOMAS PACHECO.
Filed in office March 1st, 1863.

GEO. FISHER, *Sec'y.*

B.—Will of José Joaquin Higuera.—H. H. No. 2, *annexed to the deposition of José Castro.*

En el nombre de Dios todo poderose Padre hijo y espiritu Santo tres personas distintas y un solo Dios verdadero. Yo Joaq'n Higuera natural de la jurisdiccion del Pueblo de S. José Guadalupe en caso preciso de grabe enfermedar deseoso de disponer en la mejor forma posible de mis bienes temporales y espirituales he llamado p'r falta de notario publico al Ciud'o Salvio Pachero p'a escribano y los
73 testigos abajo subscritos p'a el devido cumplim'to de esta mi hultima volundad qe. apresencia de mi resectito juez alcalde otorgo p'a buena mi disposicion y mando en primer lugar mi cuerpo á la tierra de que fue formado qe. se entierre qe. se entierre despues de mi muerte en la mision de S'ta Clara con el abito de H. P. S. Fran'co si se en contrare y de no con lo que se pueda en segundo mi alma el Sr. que la crió.

Ytem. Declaro qe. es mi hultima foluntad pover á mi esposa Ma. Bernarda Soto pr. primera albacea de todos los bienes que poseo y mi hijo Joaq'n. pa. segundo albacea y tutor de los bienes qe. á mí menor Juan Ma. le tocare hasta tanto se halle este en estado de manejarse por si; y que haste segundo obre de acuerdo con el primero y sea en beneficio de mis erederos.

Ytem. Declaro que soy dendor á Dn. Juan Aleman en la cantidad detrescientas pesos esto es si el pago fuere en metalico; y si fuere en esquilmos se debe la demacia de cincuenta aparte a heste mismo S'r la debo beinte y ura cueros de res y á Dn. Guillermo Gulnac beinte y sinco ps. seis rs.

Ytem. Declaro que me son dendores varios individnos asi de
74 monedas corrientes como de bienes muelbes cuy a lista ú apunte incluyo qe. quedara vigente pa. su devida complimto. en mis albaceas.

Ytem. Declaro que institullo y nombro por mis herederos á mi muger con quien soy casado segun la orden de nta madra la sta yglesia, de cullo Matrimonio tengo cuatro hijos barones y siete mugeres, dejando en primer lugar de vienes y casa con la propiedad de rancho, en el menor hijo y d'ho Juan Ma. con la muger con todos los muebles que encierra la casa no entendiendose la razon qe. i d'ho de propiedad de rancho que es division ni reparto, solo q. todos tengan derecho en meter vienes y demas cultivo de su beneficio, y pa.

escusar dudas es mi boluntad acerla distincion de eredoros y q. numero á cada uno,

Ytem. Declaro que la muger tome la casa del rancho con todos los muebles qe. encierra y la otra que esta en el Pueblo, se benda para bien de mi alma. A mi hijo Joaquin le dejo quince bacan y una llunta de Buelles. A José Antonio quince Bacas con su llunta de Buelles. Manuel Cuatro Bacas, Ma. Petra Cuatro Bacas. Teresa Cuatro, no reconosco pr. erederos á mis dos hijas Josefas que
75 hetan mancipados pr. lo que ase á la Caballanda una manada manso con las quince lleguas qe. anota la lista mita pr. mitad á la muger y hijo menor, el resto de vienes qe. to do queda al sosten de la muger y menores qe. estan asu lads, teniendo la confianza, en la muger qe. aga y gaste en sufragar tods lo que guste ó pueda.

Ytem. Declaro tener un Baul en qe. se encierra la ropa de mi huss, culla ropa la dejo á mi hijo Juan y'el Baul á la mi muger, cuatro caballos de mi silla á mi hijo d'ho Juan y la silla.

Ytem. Declaro que es mi ultima voluntad dejar a poderado de la denda de Juan Aleman pa. que se exija á los albaceas al pago, segun, y conforme trato al Cindo. Salvio Pacheco quien si se subcitasen gastos pa. indiferiencias en cullo caso ocurra, á los albaceas pa. qe. se toque con esto en los vienes de campo.

Ytem. Declaro que el Fierro de errar, y señal lo dejo á mi hijo menor Juan.

Y para que y tenga el debido cumpliminto to ratifico en precencia de los testigos y escribano en al Pueblo de S. José Guadaloupe y pr. no saber firmar lo berifico con la señal de cruz á los tres dias
76 del mes de Obre de mil ochocientos treinta y ocho.

JOAQ'N HIGUERA. †
DOLORES MESA. †
SEBASTIAN BUTRON. †

Ante mi, juez alcalde, de que doy fé.

DOLORES PACHECO.
SALVIO PACHECO.

Ano 38. Apunte qe. manifesta los deritos qe. causo entratos con particulares y qe. se debe satisfacer con las dondiciones qe. señala, a saber.

Sacado pr. el finado, Joaq'n Higuera. S. S.

Al Sr. Juan Aleman trecientos ps. en metalico y de no siendo en esquilmos deben ser sincuenta mas	$300.00
Dn. Guillermo Gulnac	25.60
A Juan Aleman aparten 21 cueros mas	00.00

Apunte de los devitos qe. causan á Joaq'n Higuerra y debe cobrarlos Joaq'n mi hijo y entregarlos á la madre.

Vidal el Artillero	100.80
Prudencio Espinosa	40.00
77 Julian Vil sien ps. mitaden plata y la otra en efectos.	100.00

Fran'co Soto tiene qe. pagar siete cueros 4s. pr.el ag'et.

Item mas—Francisco Soto, 25 cueros aparte de los siete qe. se le anotan.

Antonio Moreno, siete ps. que se le paquen al Capn. Angel Bojorquez, quince eleguas pr. un molino y de no dar los q. se le quete el d'ho molino y quede en poder de la muger Fran'co Pacheco, 2 as de Sebo.

Juan Bijorquez primero un cuero.

Juan Bijorquez segundo una elegua bronca.

Fran'co Soto cuatro eleguas broncas.

Ma. Antonio Atamirau cuatro cueros qe. los entreguen á en hija Petra.

S. R.

Juan Soto, 10.

Pedro Misa tres cueros que se le prestaron y los á de elebaral rancho.

Y para qe. la adjunta lista tome ser efecto y valor, qe. corresponde la firman testigos de mi otra testamentaria.

PUEBLO DE S. JOSE, *O'bre* 3 *de* 1838.

Sebastian Butron, † Dolores Mesa, †—Arruego de la parte interesada, Joaq'n Higuera, y qe. doy fé.

SALVIO PACHECO.

78 Filed in office Feb'y 26, 1853, and anx'd to the dep. of José Castro, with mark H. H. No. 2.

GEO. FISHER, *Sec'y.*

B.

Translation of the will of José Joaquin Higuera, &c., annexed to dep. of José Castro.

In the name of Almighty God, Father, Son, and Holy Spirit, three distinct persons, but only one true God:

I, Joaq'n Higuera, resident of the jurisdiction of the Pueblo de San José Guadalupe, compelled by grave infirmity, and desirous to dispose of my goods, temporal and spiritual, in the best form possible, I have called the citizen Salvio Pacheco as writer, (for want of a notary public,) as also the witnesses hereunto subscribed, for the strict compliance of this my last will, that in the presence of my respective judge, the alcalde, I authorize for good my disposition and command. In the first place, my body to the earth of which it was formed, and that it should be interred after my death in the mission of Sta. Clara, with the habit of N. S. S. Franc'o, if it can be met with, and if not, with what it can.

Secondly, my soul to God who created it.

79 Item. I declare that it is my last will to put my wife, M'a Bernarda Soto, as first executor of all the goods which I pos-

sess, and my son Joaq'n for second executor and guardian of the property which to my youngest son Juan M'a will belong, until such time as he will reach such estate as to beable to manage for himself. For the carrying out this last duty he shall act in concert with the first, as being for the benefit of my heirs.

Item. I declare that I am indebted to D'n Juan, the German, in the sum of three hundred dollars—that is, if paid in money; but if paid in country produce, there shall be paid, besides, fifty dollars; besides which, I owe this man twenty-one hrdrs., and to D'n Guillermo Gulnac twenty-five dollars six reals.

Item. I declare that there are various individuals who are indebted to me both in current money as also in movable property, a list or minute of which I enclose, and remains in force for the faithful compliance of my executors.

Item. I declare that I constitute and name as my heirs, my wife with whom I am married according to the order of our Holy
80 Mother the Church, of which marriage I have four sons and seven daughters, having in the first place of the goods and house with the ownership of the rancho in the youngest son and said Juan M'a with the wife, with all the movables which are in the house, not understanding, for this reason, that the said ownership of the rancho is division or partition, only that all have right to put thereon cattle, and to other cultivation, for their benefit, and for to avoid doubt, it is my will to make this distinction of heirs, and what number to each one.

Item. I declare that my wife take the house of the rancho, with all the movables which are within, and the other house which is in the Pueblo shall be sold for the benefit of my soul. To my son Joaquin I leave fifteen cows and a yoke of oxen; to José Antonio fifteen cows, with his yoke of oxen; Manuel, four cows; M'a Petra, four cows; Teresa, four; not acknowledging as heirs my two daughters who are emancipated, by which they will make of the band of horses a band of, with the fifteen mares which are noted in the list,
81 half and half for my wife and youngest son; the remainder of my goods which shall be left, for the sustenance of my wife and minors which are at her side, having the confidence in my wife that she will make or spend for the benefit of my soul what she pleases or can.

Item. I declare that I have a trunk in which are enclosed my wearing apparel, with clothing I leave to my son Juan, and the trunk to my wife. Four horses of my saddle to my son, said Juan, and the saddle.

Item. I declare that it is my last will to have encharged of the debt to John the German the citizen Salvio Pacheco, that he may, with my executor, make payment according to contract, whom if he should incur any costs for any differences, in which case he will apply to the executor to be paid from the cattle.

Item. I declare that my branding and mark I leave to my son the younger Juan.

And in order that it may have due compliance I ratify it in pres-

ence of the witnesses and writer in the pueblo of San José Guadalupe, and as not knowing how to write, I signed by making the sign of the cross, the third day of Oct., one thousand eight hun-
82 dred and thirty-eight.

† JOAQUIN HIGUERA,
† DOLORES MESA,
† SEBASTIAN BUTRON.

Before me, judge alcalde, of which I give faith.

DOLORES PACHECO,
Year 1838. SALVIO PACHECO.

A list which manifests the debts caused in trades with individuals which should be satisfied with the conditions marked therein, to wit: Taken by the deceased, Joaquin Higuera.

To Mr. Juan Aleman three hundred dollars in (metalico) coin, and if not, being in produce, it shall be fifty more.... 300 00
D'n Guillermo Gulnac..... 25 00
To Juan Aleman, besides, 21 hides more.

A list which shows the debts due to Joaquin Higuera, and should be collected by my son Joaquin and delivered to his mother.

Vidal the artillerist..... 100 80
Prudencio Espinosa..... 40 00
Julian Vil one hundred dollars, half in coin and half in store goods..... 100 00
Fran'co Soto has to pay seven hides 4*s.* for the liquor.
Item more. Fran'co Soto 25 hides, besides the seven which
83 are anoted.
Antonio Moreno seven ps., which he shall pay to the Capt. Angel Bojorquez fifteen mares for a mill, and if he do not give them take the mill from him, which shall remain with my wife.
Fran'co Pacheco, 9 *a* tallow.
Juan Bojorquez, the first, one hide.
Juan Bojorquez, the second, a wild mare.
Fran'co Soto, four wild mares.
Maria Antonio Altamirano, four hides, which he will deliver to my daughter Petra..... 6 6
Juan Soto..... 10

Filed in office March 1, 1853.
(Sig'd) GEO. FISHER, *Sec'y.*

C.—Copy of the will of Maria Bernarda Soto de Higuera, &c.

En el nombre de Dios, todo todo poderoso uno en esencia y trino en persona, Yo, Maria Bernarda Soto, natural del p° dec. José de Guadalupe y abecindado en el mismo hija, legitima y de legitimo matrimonia, de padres difuntos; allandome enfermo en como de la en-

fermedad qe. Dios Nuestro Sor: se ha servido enviarme: pero en mi entero juicio y cabal memoria, creyendo. como firmem'te creo
84 todos los misterios de N'tra Sta. Fé Catolica en cuya fé y esencia quiero y protesto vivir y morir y esperando en la debina misericordia me perdonará mis culpas y pecados pr. la intercesion de Maria Santis'ma Nuestra Sora; cuyo patrocinio me acojo, para qe. con el santo angel de mi guarda santo de mi nombre y demas santos de mi debocion: me amparen y faborescan en trance de mi muerte, ago, otorgo, y ordeno, este mi testamento, en la forma siguiente.

Primeram'te. Encomiendo mi alma á Dios, qe. la crio de la nada, y mi cuerpo á la tierra de que fue formado.

Ytem. Ei mi boluntad que mi cuerpo sea amortajado, segun costumbre; y enterrado en la yglesia de Sta. Clara: dejando à disposicion de mis albaceas los sufragios qe. su caridad les dicte.

Ytem. Declaro ser viuda de Joaquin Higuera, el qe. me dejó en mi poder una casa uperada, un molino de rastra, siete yuntas de buelles, dos carretas y unas rodadas cinco arados aperados, onse caballos mansos, una manada con veinte y cinco yeguas de vientre y un gariñon.

85 Ytem. Dejó un terreno, el que queda mi disposicion, qe. consta de dos sitios de ganado mayor, tiene doscientos reses poco mas ó menos, una mula mansa.

Ytem. Declaro pr. mis hijos legitimos habidos en el matrimonio indicado, á Maria Petra, Maria Josefa, M'a Josefa, José Manuel, Maria Antonia, Joaquin, José Antonio, Juan Maria Ramona y Dominga.

Ytem. Declaro no deber á nadie nada.

Ytem. Declaro que las deudas qe. pertenecian á mi finado esposo estan bigentes en su testamento.

Ytem. Declaro pr. mis albaceas á D'n José Noriega en primer lugar, y á mi hijo Joaq'n en segundo; los cuales de mancomun é insolidum pondrán á disposicion de mi hijo Juan Maria seis reses, cinco yuntas de buelles con sus aperos, dos carretas y la rodada, once caballos mansos y la manada, menos ocho yeguas, qe. son de José Antonio, casa y molino y demas hutencilios de adentro, una caja.

Ytem. Dejo á mi hija Dominga un Baul con la ropa de mi uso, una yunta de buelles y diez reses.

Ytem. Dejo á mi hija Ramona una yunta de buelles y diez reses.

86 Ytem. Dejo á faber de mis hijos Joaquin Manuel, José Antonio, y Juan, el terreno mencionado.

Ytem. Declaro qe. se paguen treinta misas pa. sufragios de mi finado esposo.

Ytem. Es mi boluntad qe. los bienes qe. quedan sobrantes, se repartan segun les paresca á mis albaceas, entre mis hijos legitimos en la inteligencia qe. á de recibir mi hija Maria Josefa la parte qe. le toque segun dispongan mis albaceas.

Ytem. Despues de cumplido y pagado todo lo espuesto del remanente de mis biénes muebles y raises, derechos y acciones institugo pr. mis unicos uniber sales herederos, á los espresados Maria Petra, Maria Josefa, Maria Josefa, José Manuel, Maria Antonia Joaquin,

José Antonio, Teresa, Ramona, Juan Maria, y Dominga, mis hijos y á los demas deud'tes legitimos qe. tubiére al tiempo de mi fallecimiento y deban heredarme para qe. los bagan y lleben pr. su orden y grado segun su representacion y lo dispuesto pr. las leyes con la bendicion de Dios y la mia. Y pr. el presente revoco y anulo cualquiera otro testam'to ó testamentos, codicilio ó codocilios, qe. yo haya
87 echo y otorgado pa. qe. no balga ni tenga efecto alguno en juicio ni fuera de el, ahora ni en tiempo alguno qe. paresca y sea mostrado, aunq' e tenga clausulas derogatibas y palabras particulares de qe. halla de hacer especial mencion de las qe. al presente no me acuerdo, y doy pr. espresadas literalmente, y quiero y mando. qe. el presente se cumpla y ejecute como mi ultima boluntad en la forma y modo qe. mejor haya lugar en derecho. Asi lo otorgo, y no firmo pr. no saber firmar ante el presente juez de paz de esta jurisdiccion á veinte y nuebe de Septiembre de mil ochocientos cuarenta, siendo testigo el C. José Noriega becino del mismo pueblo. Y yo el juez de paz del 2o nombram'to del pueblo de S. José Guadalupe actuando pr. receptoria con dos testigos de asistencia á falta de escribano publico. Doy fé qe. conosco á la otorgante quien á lo que parece se haya en su entero juicio, acuerdo y cumplida memoria. En testimonio de lo cual lo firmo ba en tres fojas de papel comun pr. carecer del sellado qe. corresponde.

JOSÉ FERNANDEZ.

Asistencia: SALVIO PACHECO.
TOMÁS PACHECO.

88 Es copia sacada fielm'te del original.

Filed in office Feb'y 26, 1853.

GEO. FISHER, *Sec'y.*

C.

Translation of the will of Maria B. Soto de Higuera.

In the name of the Almighty God, one in essence and three in persona, I, Maria Bernarda Soto, native of the Pueblo de San José de Gde., and a resident of the same, legitimate daughter of legitimate matrimony of parents now deceased, finding myself sick in bed of disease, which God our Lord has seen fit to send me, but in my entire sense and memory, believing, as I firmly believe, all the mysteries of our holy Catholic faith, in which faith I desire to live and die, and hoping in the divine mercy will pardon me my sins by the intercession of the blessed Virgin Mary, which patron I have chosen, together with my guardian angel and the saint of my name, and all other saints of my devotion will assist and favor my transmit from death, make, authorize, and order this my testament in the form following:

89 First. Recommending my soul to God who created it of nothing, and my body to earth of which it was made.

Item. It is my will that my corpse shall be disposed of according to custom, and that it shall be buried in the church of Santa Clara, leaving to my executors the prayers which charity shall dictate.

Item. I declare myself the widow of Joaquin Higuera, who left me in my power a house standing, a draught mill, seven yoke of oxen, two carts, and some wheels, five ploughs with gearing, eleven tame horses, a band of 25 wild mares, and a stallion.

Item. He left land which remained at my disposition, which consists of one sitio of ganado mayor; it has 200 head of cattle, little more or less, and a tame mule.

Item. Declare for my legitimate children had in matrimony, Ma. Petra, Ma. Josefa, Ma. Josefa, José Manuel, Maria Antonio Joaquin, José Antonio, Juan Maria, Ramona and Dominga.

Item. I declare that I do not owe anything to anybody.

Item. I declare that the debts due to my deceased husband are set forth in his will.

90 Item. Declare as my executors José Noriega in the first place, and my son Joaquin in the second, which persons will jointly and severally place at the disposal of my son, Juan Maria, one hundred head of cattle, five yoke of oxen with their yokes, two carts with the wheels, and eleven tame horses, and the band of mares, less eight, which belong to José Antonio. House and mill and other utensils which are within a house.

Item. I leave to my daughter, Dominga, a trunk with the clothing of my use, one yoke of oxen, and ten cattle.

Item. I leave to my daughter, Ramona, one yoke of oxen and ten cattle.

Item. I leave in favor of my sons, Joaquin Manuel, José Antonio, and Juan, the land mentioned.

Item. Declare that they pay for thirty masses for the repose of my deceased husband.

Item. It is my will that the property which shall be over shall be divided as my executor shall desire between my legitimate children, with the understanding that my daughter, Maria Josefa, shall receive the portion which shall be allotted her by my executor.

91 Item. After having paid and complied with the aforesaid, of the remainder of my goods and properties, rights and actions instituted by my only direct heirs as expressed, Ma. Petra. Maria Josefa, Ma. Josefa, José Manuel, Maria Antonio, Joaquin, José Antonio, Terreda, Ramona, Juan Maria, and Dominga, my children, and all other legitimate descendants which I might have at the time of my death, and who should inherit that they may take and receive in their order and grade according to representation and what is disposed by law, with the blessing of God and mine.

And by these presents I revoke and annul whatsoever testament or testaments, codicil or codicils, which I might have made or authorized, that they may have no value or effect in court or out of it, neither now nor hereafter that may appear or be shown, although they may contain clauses derogatory or words particular of which it makes especial mention, of which I at present do not recollect. I give as

expressed literally, and wish and command that this present
92 shall be complied with and executed as my last will in the form and way which they can find in right.

Thus I authorize but not sign, as I do not know how to sign before the present justice of the peace of this jurisdiction, the 29th of Sept., 1840, being witnesses, the citizen José Noriega being a resident of said Pueblo de San José, and I, the justice of the peace of the 2d nomination of the Pueblo de San José de Gde., acting in legal form, with two assisting winesses, for want of a public writer.

I give faith and know the party authorizing this, whom I find in her entire sense and recollection and complete memory.

In testimony of which I sign on three sheets of common paper, as there is no sealed paper corresponding.

JOSÉ FERNANDEZ.

SALVIO PACHECO.
TOMAS PACHECO.

Filed in office.
(Signed) GEO. FISHER, *Sec'y.*

93 D.

Deed from Domingo Higuera to Charles White.

Nosotros los abajos firmados certificamos que estamos satisfecho con la disposicion hecha por las alvaceas de la testamento de nuestros padre y madre habiendo recibido la herencia que á nosotros apertenece y que desde ahora para en adelante renuncia cualquiera de nuestros derechos y lo cede á favor de Juan Higuera, nuestro Hermano y para vue conste en todo el tiempo firmamos este en presencia de los testigos presentes.

El dia 9 del mes de Febrero de 1845, e dado la parte que me toca del rancho á mi ermano Juan Higuera y para que conste lo firmo.

DOMINGO Y'GE.

MIGUEL FELIZ.

Sor testigo que sora Dominga sedio en parte á su ermano Juan.

JUAN JOSÉ FELIZ,
Pir lo Francisco.

Filed in office Feb'y 26th, 1853.

GEO. FISHER, *Sec'y.*

94 *B. P. L.—Exhibit to dep. of Salvio Pacheco, Sept.* 22, 1854.

Jusgado de Paz de S. Josè de Guadalupe.

Testamento otorgado por Da. Ma. Bernarda Soto, en veinte y nueve de Sep'bre de 1840.

Va en tres fojas de papel comun.

En el nombre de Dios todo poderoso, uno en esencia y trino en persona, Yo, Maria Bernarda Soto, natural del Pueblo de S. José Guada-

lupe y abecindada in d'ho Pueblo hija legitima y de legitimo matrimonio de padres difuntos, allandome en'e me en como de la enfermedad qe. Dios N'tro Sr. se a servido enviarme pero en mi entero juicio y cabal memcria; creyendo como firmemente creo todo los misterios de N'tra Sta. Feé Catolica en cuya feé y creencia quiero y protesto vivir y morir, y esperando en la divina misericordia me perdonará mis culpas y pecador por la intersecion de Ma. Santisima N'tra S'ra a cuyo patrocinio me acojo para que con el santo angel de mi
95 guarda, santo de mi debocion me amparen y favorescan entrance de mi muerte; ago, otorgo, y ordeno este mi testamento en la forma siguiente:

Primeram'te. Encomiendo mi alma á Dios que la creó de nada y my cuerpo á la tierra de que fué formada.

Yt. Es mi boluntad q'e mi cuerpo sea amortajodo segun costumbre y enterrado en la yglesia de Sta. Clara; dejando á disposicion de mis albaceas los sufragios que su curidad les dicte.

Yt. Declaro ser viuda de Joaquin Higuera, el que me dejo en mi poder una caso aperada y un molino de rastra siete lluntas de buelles, dos carretas y una rodado husadas sinco arados aperados once caballos mansos una manada con beinta y sinco lleguas de vientre y caballo padre.

Yt. Dejo un terreno el que quedo á mi disposicion que consta de un sitio de ganado mayor tiene doscientas reses poco mas ó menos una mula mansa.

Yt. Declaro por mis hijos legitimos avidos en el matrimonio indicado á Ma. Petra, Ma. Josefa, José Manuel, Ma. Antonio Joaquin,
96 José Antonio Demetri, Teresa Ramona, Dominga Juan Ma. los cuales an revivido sus legitimos al tiempo de casarse, menos Joaquin, José Antonio, Juan Ma., Ramona, Dominga.

Yt. Declaro no deber á nadie nada.

Yt. Declaro que las deudas que pertenecian á mi finado esposo estan vigentes en su testamento.

Yt. Declaro por mis albaceas á D'n José Noriega en primer lugar, y á mi hijo Joaq'n en segundo; los cuales de mancomun é insolidum pondran á disposicion de mi hijo Juan Ma. sien reses, sinco lluntas de buelles, con sus apuros dos carretas y las rodadas y once caballos mansos y la manada menos ocho lleguas, que son de José Antonio casa y molino, y demas huntecilios de adentro, una caja.

Yt. Dejo á mi hija Dominga un Baul con la ropa de mi huso una llunta de buelles y diez reses.

Yt. Dejo á mi hija Ramona una llunta de buelles y diez reses.

Yt. Dejo á fabor de mis hijos Joaquin Manuel, José Antonio y Juan el terreno mencionado.

Yt. Declaro que se paguen treinta misas por sufragios de mi finado esposo.

97 Yt. Es mi voluntad q'e los vienes quedan sobrantes, se repartan segun les paresca á mis albaceas, entre mis legitimos hijos y á mencionados en la intelig'a q'e á de recibir mi hija Ma. Josefa la parte que le toque segun dispongan mis albaceas.

Yt. Despues de cumplido y pagado todo lo espresado del remanente

se mis bienes muebles y raises, derechos y acciones institullo pr. mis hunicos uniber sales erederos á los espresados Ma. Petra, Ma. Josefa, Ma. Josefa, José Manuel, Ma. Antonio Joaquin, José Antonio Teresa, Ramona, Juan Ma. y Dominga mis hijos, y á los demas desendientes legitimos que tuviere al tiempo de mi fallecim'to deban eredarme, para q'e los agan y lleben pr. su orden y grado segun su representacion y lo dispuesto pr. las leyes con la bendicion de Dios y la mia.

Y por el presente reboco y anulo cualquiera otro testamento ó testamentos, codicilio ó codicilios, que yo aya hecho y otorgada para que no balga ni tenga efecto alguno en juicio ni fuera del aora ni en tiempo alguno que paresca y sea mostrado aunque tenga clausulas derogatorias y palabras particulares de lo que aya de aser especialmente de
98 las que al presente no me acuerdo y doy pr. espresados literalm'te y quiero y mando que el presente se cumpla y egecute como mi hultima deliberada boluntad en la forma y modo que mejor aya lugar en derecho. Asi lo otorgo y no firmo pr. no saber ante el presente juez de paz de esta jurisdiccion á beinte y nuebe de Sep'bre de mil ochocientos cuarenta, siendo testigo el ciudadano José Noriega becino del mismo pueblo, y yo el juez de paz de segundo nombram'to del pueblo de S. José Guadalupe actuando pr. receptoria con dos testigos de asistencia á falta de escribano publico, doy fé que conosco á la otorgante, quien á lo que parece se alla en su entero juicio acuerdo y cumplida memoria; en testimonio de lo cual lo firmo. Ba en tres fojas de papel comun pr. carecer del sellado que corresponde.

JOSÉ FERNANDEZ.

As'a: SALVIO PACHECO.
As'a: TOMAS PACHECO.

Filed in office Sept. 22, 1854.

GEO. FISHER, *Sec'y.*

Justices' court of San José Guadalupe.

99 *Will made by Doña Maria Bernarda Soto on the 29th of September*, 1840.

Written on three sheets of common paper.

In the name of Almighty God, one in essence and triune in person, I, Maria Bernarda Soto, a native of the pueblo of San José Guadalupe, and a resident of said pueblo, legitimate daughter of deceased parents in legitimate wedlock, being sick in a bed of infirmity with which God our Lord has been pleased to visit me, but of sound mind and perfect memory, believing as I firmly believe all the mysteries of our holy Catholic faith, in which faith and belief I desire and protest to live and die, and hoping that in His divine mercy He will pardon my offences and sins through the intercession of the most Holy Mary, our Lady, to whose protection I resort, in order that with the holy guardian angel the saint of my name, and the other saints of my devotion, she may support and protect me in the critical moment
100 of my death, I make, execute, and ordain this my testament in the following form:

Firstly. I commend my soul to God, who from nothing created it, and my body to the earth from which it was formed.

Item. It is my will that my body be shrouded as is customary, and interred in the church at Santa Clara, leaving to the disposition of my executors such suffrages as their charity may dictate.

Item. I declare that I am the widow of Joaquin Higuera, who left to me in my possession a house with its furniture, and a draught mill, seven yokes of oxen, two carts, and another with ironed wheels, five ploughs and trimmings, eleven tame horses, twenty-five brood mares, and a stallion.

Item. I leave a tract of land that which remained at my disposition, which embraces one square league, (un sitio de ganado mayor,) with two hundred head of cattle, a few more or less, thereon, and a mule.

Item. I declare Maria Petra, Maria Josefa, José Manuel, Maria Antonio Joaquin, José Antonio Dimitri, Teresa Ramona, Dominga and
101 Juan Maria, all of whom at their marriage, except Joaquin, José Antonio, Juan Maria, Ramona and Dominga, received their shares of the estate, to be my legitimate children, the offspring of the aforesaid wedlock.

Item. I declare that I owe nothing to any one.

Item. I declare Don José Noriega to be my first executor, and my son Joaquin my second executor, who jointly and in solidum shall place at the disposition of my son Juan Maria one hundred head of cattle, five yokes of oxen, with their yokes, two carts, and the ironed one, eleven tame horses and the band of mares (less eight mares) which belong to José Antonio, the house and mill, and the other utensils therein, and a chest.

Item. To my daughter Dominga I leave a trunk, with my wearing apparel, one yoke of oxen, and six head of cattle.

Item. To my daughter Ramona I leave one yoke of oxen and ten head of cattle.

Item. I leave the aforesaid land in favor of my sons Joaquin Manuel, José Antonio, and Juan.

Item. I declare that thirty masses shall be paid as suffrages for my deceased husband.

102 Item. It is my will that the remainder of the property be divided between my aforesaid legitimate children in the manner that may appear best to my executors, with the understanding that my daughter Maria Josefa is to receive the part which may fall to her share thereof, according to the disposition of my executor.

Item. After having been fulfilled, and paid all of the foregoing, relative to the remainder of my personal and real property, rights and shares, I constitute the aforesaid Maria Petra, Maria Josefa, José Manuel, Maria Antonio Joaquin, José Antonio, Teresa Ramona, Juan Maria, and Dominga, my children, and all the other legitimate descendants which I might have at the time of my decease, and who should heir me, that they may find them and consider them in their order and grade, according to their representation and the provisions of the laws, with the blessings of God and my own.

And I hereby revoke and annul every other testament or testa-

ments whatever, codicil or codicils, which I may have made
103 and executed, in order that they not be valid nor have any effect neither in court nor out of court, neither now nor at any time that they may appear and be presented, although they may contain derogatory clauses and particular words, of which special mention is to be made, which at present I do not remember, but acknowledge as literally expressed; and I will and command that this instrument be complied with and executed, as my last will and deliberate will, in the best form and manner by law provided.

I thus execute and do not sign it, because I do not know how, in presence of the present justice of the peace of this jurisdiction, on the twenty-ninth day of September, one thousand eight hundred and forty, citizen José Noriega, resident of the said pueblo, being witness.

And I, the justice of the peace of the 2d nomination of the pueblo of San José Guadalupe, acting ad interim with two assisting witnesses, for the want of a notary public, testify that I know the testatrix, who, from every appearance, is of sound mind, recollection, and perfect memory.

In testimony whereof, I subscribe it. Written on three
104 sheets of common paper for want of the corresponding stamped.

(Signed) JOSÉ FERNANDEZ.

Assisting witnesses:

(Signed) SALVIO PACHECO.

(Signed) TOMAS PACHECO.

I, George Fisher, secretary to the United States land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a document in case No. 638, Charles White *vs.* The United States, for the place named Pala, now on file in this office.

In testimony whereof, I have hereunto signed my name at office, at the city of San Francisco, Cal., the second day of January, A. D. 1855.

(Signed) GEO. FISHER, *Sec'y.*

Filed in office Jan. 2, 1855.

GEO. FISHER, *Sec'y.*

E.—Conveyance from Higuera et al. to Juan Maria Higuera.

105 This indenture, made and entered into on the sixteenth day of May, A. D. eighteen hundred and fifty, by and between Manuel Higuera and José Antonio Higuera, of the county of Contra Costa, of the first part, and Juan Higuera, of Sta. Clara county, State of California, of the second part, witnesseth:

That the said party of the first part, for and in consideration of its value being since received, together with the sum of one dollar to

each of them in hand paid by the party of the second part, hath bargained, sold, and conveyed unto the said party of the second part, and to his heirs and assigns forever, all their right, interest and title which they now or ever had to the rancho de Pala, together with all their rights, interest and title which they may have in law or equity, under the will of their deceased parents, Joaquin Higuera and Bernardo Soto, said rancho de Pala being and lying in the county of Sta. Clara, and State of California, being bounded by the Arroyo de la Aguaga on the northward, by the pueblo lands on the west, by the lands of Antonio Chabolla on the south, and by the lands
106 known as the Cañada de Pala on the north, together with all the rights, privileges and appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the same to the said party of the second part, his heirs and assigns, forever.

In witness whereof, we have hereunto affixed our hands and seals, day and year first above written.

his
MANUEL + HIGUERA.
mark.

his
JOSE ANTONIO + HIGUERA.
mark.

her
MARIA NICOLUSA + MERA.
mark.

Attest: ABSALOM PEAK.
JOSE BOTHENHAUSTERA.

STATE OF CALIFORNIA,
County of Contra Costa.

Be it remembered, that Manuel Higuera and José Antonio Higuera, and Maria Nicolasa Mesa, wife to Maria Higuera, who are personally known to the undersigned, county judge of Contra Costa county, to be the persons whose names are subscribed to the above deed as parties thereto, this day appeared before me, and acknowledged
107 that they executed and delivered the same as their voluntary act and deed, for the uses and purposes therein mentioned, and the said Masia Nicolasa Mesa, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely, without compulsion or undue influence of her husband.

Given under my hand this sixteenth day of May, 1850.

F. M. WAMCASTER,
County Judge Contra Costa County.

Filed in office Feb. 26, 1853.
(Signed) GEO. FISHER, *Sec'y.*

F.—Conveyance, &c., from Higuera et al. to White.

This indenture, made and entered into on the twelfth day of July, A. D. one thousand eight hundred and fifty-two, between Joaquin Higuera, Juan M'a Higuera, and Maria Petra Higuera, of the county of Santa Clara and State of California, of the first part, and Charles White, of the city of San José, State aforesaid, of the second part, witnesseth:

That the parties of the first part, for and in consideration of the sum of five thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby fully acknowledged, hath bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all their right, title, and interest in and to all that tract or parcel of land lying and being in the county of Sta. Clara, and State of California, being known as that part of the rancho de Pala laying west of the foot of the hills, which are known by a line beginning at three oak trees, near the round hills, two of which are blazed, and one marked A; from thence northward to three oak trees on the bank of an arroyo, one of which oaks are marked thus, A; from thence northerly in the direction of an oak tree marked thus, A, on the top of the low hills, until it reaches the lands bought by Charles White of Juan Higuera.

To have and to hold the aforesaid lands, with all the rights and privileges thereunto belonging or in anywise appertaining, as fully as the same was held by the party of the first part.

109 In witness whereof, the partys of the first part hath hereunto set their hands and seals, day and year first above written.

JOAQUIN his + mark. HIGUERA.

JUAN MARIA his + mark. HIGUERA.

MARIA PETRA her + mark. HIGUERA.

Witness for Joaquin Higuera, Henry Bee.

Frederick Hall witness to Juan Maria Higuera and Maria Petra Higuera.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On the 11th of July A. D. 1852, personally appeared before me, a notary public in and for said county, Maria Petra Higuera, known to me to be one of the persons described in and who executed the foregoing instrument who acknowledged to me that she executed the same freely and voluntarily, and for the uses and purposes therein mentioned. Also, on the 13th day of July, A. D. 1852, personally appeared before me Juan Maria Higuera, known to me to be

110 one of the persons described in and who executed the foregoing instrument, who acknowledged to me that he executed

the same freely and voluntarily, and for the uses and purposes therein mentioned. Also, on the 1st day of August, A. D. 1852, personally appeared before me Joaquin Higuera, known to me to be one of the persons described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my seal of office this 2d day of Aug., A. D. 1852, at San José.

[SEAL.] FREDERICK HALL, *Notary Public.*

Filed in office Feb'y 26, 1853.

(Signed) GEO. FISHER, *Sec'y.*

G.—Conveyance from Juan Maria Higuera to White.

111 This indenture, made and entered into on the fourteenth day of January, A. D. eighteen hundred and fifty-three, by and between Juan Maria Higuera, of the county of Santa Clara, State of California, of the first part, and Charles White, of the same place, of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of ten thousand dollars, to him in hand paid by the party of the second part, receipt whereof is hereby acknowledged, hath bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest in and to all that tract or parcel of land lying and being in the county of Santa Clara and State of California, being bounded on the north by the Arroyo del Aguage, on the east by the dividing ridge of the mountain, on the south by the Arroyo de los Alisos, and on the west by a line from a tree or stump marked thus, +, near the house of Anastacio Chabolla, to a pile of stones on the banks of the Aguage creek, said
112 rancho being known by the name of *Pala.*

To have and to hold the aforesaid tract of land, together with all the rights and privileges thereunto belonging, as fully as the same was had by the party of the first part.

In witness whereof, the party of the first part hath hereunto set his hand and seal, day and year first above written.

JUAN MARIA + HIGUERA. [SEAL.]

Witness: FREDERICK HALL.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 14th day of January, A. D. 1853, personally appeared before me, a notary public in and for said county, Juan Maria Higuera, known to me to be the person described in and who executed the

foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed my official seal, at San José.

113 FREDERICK HALL,
Notary Public.

Filed in office Feb'y 26, 1853.

GEO. FISHER, *Sec'y.*

Stipulation.—Case No. 638.

We agree that the evidence of James Alexander Forbes, taken in case No. 292, in reference to the making and execution of wills, may be used in case No. 638.

January 12th, 1854.

WALLACE & RYLAND,
Att'ys for Claimant.
ROBERT GREENHOW,
Ass't Law Agent, U. S.

Filed in office Jan. 12, 1854.

GEO. FISHER, *Sec'y.*

114 Before the board of commissioners to ascertain and settle private land claims in California.

Case No. 638.—Case No. 677.—Rancho de Pala.

Stipulation.

It is hereby agreed and stipulated that the two cases, to wit, 638 and 677, for the rancho "Pala," situated in Santa Clara county, may be submitted and considered together as one case, both of them relating to the same tract of land, and claimed under the same grant.

WALLACE & RYLAND,
Atto's for Claimants.
LEWIS BLANDING,
Assist. Law Agent.

Filed in office Dec. 12, 1854.

GEO. FISHER, *Sec'y.*

115 *Deposition of James Alexander Forbes.*

Case No. 292.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS,
San Francisco, Jan. 2, 1854.

On this day, before Commissioner R. Aug. Thompson, came James Alexander Forbes, a witness in behalf of claimant, Ellen E. White, No. 292, who, after being duly sworn, deposed as follows:

Present: Claimant's att'y and U. S. ass't law agent.

Witness states his name is James Alexander Forbes; his age forty-eight years; and residence, Santa Clara co., Cal.

Question by claimant's att'y. Were you acquainted with Charles White, now deceased, Augustine Alviso, and José Antonio Alviso, and Guadalupe Berreyesa? If so, state whether you know of a deed for land being made by the three last-named persons, or either of them, to said Charles White; what land was conveyed; where situated; and all you know of the circumstances.

Answer. I know all the persons named in the question.
116 Charles White, Guadalupe Berreyesa, are dead; the others are living.

I know that in the latter part of August, 1848, Augustin Alviso, being the first-named executor of the will of his father, Ignacio Alviso, made a conveyance of land to the late Charles White, according to an order in that will for the payment of the debts of the said testator, for the sum of two thousand dollars, which was paid to the said Augustin Alviso by the said White, as the consideration for said land, in my presence in two payments.

The said deed of conveyance was drawn up by me in the Spanish language, and was executed in my presence before an alcalde, according to the usages of the country at that time, I being one of the assisting witnesses.

The land conveyed is situated in the present county of Santa Clara, on the south and west of the old road which leads from the mission of San José to the town of San José.

It is bounded on the northeast by the stream known as the
117 Arroyo de Penitencia; on the northwest by the estuary, on the bay of San Francisco; on the south and southwest by the Arroyo de Coyote; on the southeast by the continuation of a line starting near the old bridge over the river Guadalupe, and running in an easterly direction to a certain sycamore tree, situated in the plain to the west of the Arroyo de Coyote, which tree stands alone and is a conspicuous object to the point where said line intersects the Arroyo de Penitencia, said land being a strip off of the eastern side of the rancho known as El Rincon de los Esteros.

Question by same. What was the usual form of making and executing wills according to the customs of the country in California, and how long have you been familiar with such customs?

Answer. I have been acquainted with those customs for more than twenty years. The uniform manner of executing will was before an alcalde and two assisting witnesses, and the certificate of the alcalde on the will of its due execution was the only evidence of probate, and was always received in the courts as sufficient proof
118 of that fact.

The will, after being certified by the alcalde, was delivered to the party appointed to execute it. No record of wills was ever kept, to my knowledge, in the northern part of California, where I resided.

Question by same. Look at the certified copy of the will of Ignacio Alviso, now shown you, and herewith filed as Exhibit No. 1, and state what you know of the execution of the original, and whether

such execution was in accordance with the usual forms and customs of the country at the time it was done?

Answer. Said original was executed in my presence. I was one of the subscribing witnesses. I do not know positively whether Salvio Pacheco was an alcalde at the time, but I know he had been acting in that capacity for many years before.

JAS. ALEX. FORBES.

Sworn to and subscribed before me Jan. 10, 1854.

R. AUG. THOMPSON, *Com'r.*

Filed in office Jan. 10, 1854.

(Signed) GEO. FISHER, *Sec'y.*

119 *Motion for substitution, &c.*

Before the board of U. S. commissioners for the adjudications of California land claims, Case No. 638, rancho de Pala.

Wallace & Ryland, attorneys for the claimants in case No. 638, moves this court for leave to substitute the names of Ellen E. White, James J. A. White, Charles E. White, and Mary Ellen White, for the name and in the place of Charles White, the original claimant in this case, the said Charles White having died since the presentations of said claim, leaving the said Ellen E. White, James J. A. White, Charles E. White, and Mary E. White, as his only heirs and legal representatives.

WALLACE & RYLAND,
Atty's for the Claimants.

Filed in office Dec'r 6, 1853.

(Signed) GEO. FISHER, *Sec'y.*

120 *Order.*

It is ordered by the board, that the names of Ellen E. White, James J. A. White, Charles E. White, and Mary E. White, be substituted for the name and in the place of Charles White, deceased, the original claimant.

Filed in office Dec. 6, 1853.

(Signed) GEO. FISHER, *Secretary.*

Opinion by Com'r Felch.

THE WIDOW AND HEIRS OF CHARLES WHITE
vs.
THE UNITED STATES.

For the place called "Pala," in Santa Clara county, containing one square league of land.

Since the filing of the original petition in this case, Charles White, the petitioner, has died, and the proceedings are now continued in the name of his widow and children, his legal representatives.

In proof of their right to the premises, the claimants have given evidence as follows:

First. A grant made by José Castro, governor ad interim, to
121 José Higuera, dated November 5, 1835.

Second. The approval of the same by the territorial deputation, December 10, 1835.

Third. The giving of judicial possession, December 21, 1835.

Fourth. Proof that said grantee lived upon and cultivated the premises from a time anterior to the grant until his death, which occurred in 1838, and that his family and their grantees have occupied ever since.

Fourth. The will of said grantee, executed October 3, 1838, bequeathing the rancho to Maria Bernardo Soto, his wife, and Juan Maria Higuera, their youngest son.

Fifth. The will of said Maria Bernardo Soto, executed September 29, 1840, bequeathing her interest in the rancho to her son; Joaquin Manuel, José Antonio, and Juan Higuera; the testatrix died in 1840.

Sixth. A deed from said Manuel Higuera and his wife, and said José Antonio Higuera, of their interest in the premises, to said Juan Higuera, dated May 16, 1850.

Seventh. A conveyance from said Joaquin Higuera and Juan Higuera, and one Maria Petra Higuera, their sister, to Charles
122 White, of a portion of said rancho by metes and bounds, dated July 12, 1852.

Eighth. A deed from said Juan Higuera of all his interest in said rancho to said Charles White, dated January 14, 1853.

In the testimonial of the judicial possession of the land is described by metes and bounds, as it was measured by the alcalde, the eastern line, manifestly running at the foot of the range of hills called Lomas de la Pala, and excluding said hills.

The alcalde, after describing the land assigned to the grantee, adds, "with the hills referred to, by having been asked for by him, and there was no one to claim them." These hills cannot, in our opinion, be regarded as any part of the premises assigned to the grantee. They were never measured, or any limits established for their boundaries, nor have we any means of knowing whether they contain one or twenty leagues of land. They will not, therefore, be embraced in the decree of confirmation.

123 In the deed signed by Joaquin Higuera the whole rancho was conveyed, excepting these hills. If the hills constituted a portion of the land to which José Higuera had title, the interest of said Joaquin Higuera would still remain in the latter to that part of the premises, and consequently it could not be confirmed to the present claimants.

But as, in the opinion of the commission, the hills are not rightfully regarded as a part of the land belonging to the original grantee,

all the interest in the rancho which was owned by said Joaquin at the date of his deed passed to said White.

The claim will be confirmed with the boundaries above indicated.

Confirmed.

Filed in office Dec. 19, 1854.

(Signed) GEO. FISHER, *Sec'y.*

124 *Decree.*

THE WIDOW AND HEIRS OF CHARLES WHITE
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed, and that the said widow and the children of said Charles White, deceased, have and hold the premises hereby confirmed to them in the several shares and proportions to which they are respectively entitled by law as the widow and children of said Charles White, deceased.

The land, of which confirmation is hereby made, is situated in the county of Santa Clara, and is known by the name of Pala, being the same formerly occupied by José Higuera, and is bounded and described as follows, to wit: commencing on the line of the lot which lays at the south of said rancho, and faces towards the north at the foot of the hills; and running thence north, along the foot of
125 said hills, twenty-five hundred varas to the Arroyo del Aguage; thence along said stream towards the west, two thousand varas, in a straight line until it reaches the sowing lands formerly used by said José Higuera and to an oak tree, which was marked as a boundary when judicial possession of said rancho was given to said Higuera in 1835, the said arroyo being the line on this side of said rancho; thence towards the south, passing by the Laguna del Socaire Arroyito, which rises from the same, five thousand five hundred varas to the first tree of an oak grove, which was marked as a boundary when said judicial possession was given; thence towards the east eighteen hundred and fifty varas, passing along the Arroyo de los Alisos, to the foot of the range of hills which runs from north to south, containing one square league of land, more or less, being the same land which was granted to José Higuera, and of which judicial possession was given to him in 1835, as appears by said grant and the testimonial of said possession which are on file in this case, and to which reference is to be had for further description. Ex-
126 cepting, however, from this confirmation the hills above mentioned, and the lands of the rancho known as that of Antonio Chaboya, and those called the lands of the town of San José.

ALPHEUS FELCH,
R. AUG. THOMPSON,
Commissioners.

Filed in office Dec. 19, 1854.

(S'g'd) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the U. S. district court for the northern district of California, and the other be transmitted to the Attorney General of the U S.

127 *Secretary's Certificate.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing one hundred and five pages, numbered from 1 to 105, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 638 on the docket of the said board, wherein Charles White is the claimant against the United States for the place known by the name of "Pala."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, Califor-
[SEAL.] nia, this thirtieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.
128 GEO. FISHER, *Sec'y.*

Endorsed: Filed July 7th, 1855.

JOHN A. MONROE, *Clerk.*

Petition.

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES, Appellants,
vs.
ELLEN E. WHITE *et als.*, heirs of Charles White, deceased, Appellees. } Case No. 233.

The petition of the United States by their attorney represents: that the cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellees was confirmed, as appears by reference to the records on the case; that a transcript of the said records was filed in this court on the 7th
129 day of July, A. D. 1855; that a notice of appeal was filed on the day of , and that the land claimed lies in the said district; that the said claim is invalid.

Wherefore appellants pray that the said decision of the board be reversed, and that the court decree the said title to be invalid.

Respectfully, &c.,

S. W. INGE, *U. S. Dist. Att'y.*

Endorsed: Filed Sept. 14, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Answer.

In the district court of the United States for the northern district of California.

ELLEN E. WHITE *et als.*, Appellees, *ads.*
THE UNITED STATES, Appellants. } Case No. 233.

Ellen E. White *et als.*, appellees in the above cause, by their attorneys, deny the allegations in the petition of the appellants.
130 They allege that their claim, set out in the petition filed before the board of U. S. land commissioners and by said board of commissioners confirmed, is a valid claim, and that their title to the land claimed is a valid and equitable title. Wherefore appellees pray that the said decision of said board of commissioners be affirmed, and that the court decree their title to be valid; and for such other and further relief as may be just.

WALLACE & RYLAND,
Attorneys for Appellees.

Endorsed: Filed Sept. 14, 1855.

JOHN A. MONROE, *Clerk*,
By WM. H. CHEVERS, *Deputy.*

Stipulation.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE *et al.*, heirs of Charles White, dec'd. } Case No. 233.

It is hereby stipulated and agreed that the testimony given
131 by James A. Forbes in case No. 238, (case 292 before the board of U. S. land commissioners,) so far as the same is applicable, may be used in case No. 233.

A. GLASSELL,
Ass't U. S. Att'y.
WALLACE & RYLAND,
Atto's. for Appellees.

Endorsed: Filed Sept. 20, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Notice of appeal in case No. 638.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10 *October*, 1855.

638. "Pala." Charles White, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the first day of August, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

132

C. CUSHING, *Attorney General.*

Endorsed: Filed Nov. 22, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Decree of confirmation.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the twenty-third day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ELLEN E. WHITE *et al.*, wid. and heirs of Chas. White, dec'd. } No. 233.

On appeal from the decision of the United States land commissioners, &c., &c.

133

This cause coming on this day to be heard upon the transcript of the decision and proceedings of the board of land commissioners to ascertain and settle private land claims in California, and upon the papers and evidence upon which the same are founded, the pleadings and further testimony taken under order of this court was submitted without argument. And thereupon, in consideration thereof, it is the opinion of this court that there is no error in the decision of said board, and the same should be, and is hereby, affirmed.

And the court doth therefore order, adjudge, and decree, that the claim of the petitioners to the land in the said transcript described is valid, and the same is hereby confirmed to them. The land of which confirmation is hereby made is situated in the county of Santa Clara, and is known by the name of "Pala," being the same formerly occupied by José Higuera, and is bounded and described as follows, to wit: commencing on the line of the lot which lays at the south of said rancho and faces towards the north at the foot of the

134

hill, and running thence north along the foot of said hills twenty-five hundred varas to the Arroyo del Aguage; thence along said stream towards the west, two thousand varas in a straight line until it reaches the sowing lands formerly used by said José Higuera, and to an oak tree which was marked as a boundary when judicial possession of said rancho was given to said Higuera in 1835, the said arroyo being the line on this side of said rancho; thence towards the south, passing by the Laguna del Socaire Arroyito, which rises from the same five thousand five hundred varas to the first tree of an oak grove, which was marked as a boundary when said judicial possession was given; thence towards the east eighteen hundred and fifty varas, passing along the Arroyo de los Alisos to the foot of the ramp of hills which runs from north to south, containing one square league of land, more or less; being the same land which was granted to José Higuera, and of which judicial possession was given to him in 1835, as appears by said grant and the testimonial of said possession which are on file in this case, and to which reference is to be had for further
135 description; excepting, however, from this confirmation the hills above mentioned and the lands of the rancho known as that of Antonio Chaboya, and those called the lands of the town of San José.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed Feb'y 23, 1857.

JOHN A. MONROE, *Clerk.*

Stipulation.

In the district court of the U. S. for the northern dist. of Cal'a.

THE UNITED STATES *v.* CHARLES WHITE, revived and final decree rendered in the name Ellen White *et als.*, widow and heirs of Charles White, dec'd.	D. C. 233. L. C. 638.

In pursuance of a notice from the U. S. Attorney General hereunto annexed, it is hereby stipulated and agreed, that no further appeal be taken in this case on the part of the U. S., and that claimants have leave to proceed under the decree of this court hereto-
136 fore rendered in their favor as under final decree.

San Francisco, February 9, 1858.

P. DELLA TORRE, *U. S. Att'y.*
WALLACE & RYLAND,
Atty's for Claimants.

ATTORNEY GENERAL'S OFFICE,
17*th February*, 1857.

SIR: You are hereby instructed to dismiss the appeal in the case of Charles White *vs.* The United States, numbered 638 on the docket of the land commissioners.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco, Cal.

Endorsed: Filed Feb'y 9, 1858.

JOHN A. MONROE, *Clerk*,
By H. W. CHEVERS, *Deputy*.

137 *Order vacating appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the ninth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ELEN E. WHITE *et als.*, widow and heirs of Charles White, deceased. } D. C. 233. L. C. 638.

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into—

On motion of P. Della Torre, esq., U. S. attorney, it is ordered that claimants have leave to proceed under the decree of this court heretofore rendered in their favor, as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed February 9, 1858.

138 JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Order to return survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the first day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
CHARLES WHITE. } D. C. No. 233. L. C. No. 638. "Pala."

It being represented to the court that there is a contest in regard to the survey of the land claimed herein, now, on motion of Mr. Ry-

land, of counsel for the claimant herein, ordered that the surveyor general of the United States for California return to this court the survey of the land herein claimed, by him made and approved.

Endorsed: Filed September 1, 1859.

139 W. H. CHEVERS, *Clerk.*

Petition and affidavits for return of survey.

District court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, *et al.* } "Pala," one square league, in Santa Clara Co.

NORTHERN DISTRICT OF CALIFORNIA, *to wit:*

The petition of Calhoun Benham respectfully shows to your honor, that a survey of the Pala ranch, situated in the county of Santa Clara, in said district, was heretofore made by the surveyor general of the United States for the State of California, and said survey was duly approved by the surveyor general on the 19th day of January, 1860, and the first publication of said survey and approval was made by the surveyor general on the 15th day of August, 1860, in pursuance of the act of Congress *of Congress* of June 14, 1860; that the United States have an interest in the survey and location of said claim; that said survey is erroneous, as appears by the affidavits of William McClay and others hereto annexed, who claim to
140 have an interest in said lands as pre-emptioners or settlers under the laws of the United States.

Wherefore your petitioner prays that an order may issue in due form directing the said surveyor general to return into this court the plat of his said official survey on or before Wednesday, the 19th day of September inst., and that the monition of this court issue in due form to the U. S. marshal, commanding him to give due notice to all parties in interest that objection has been made to the survey and location of the land finally confirmed herein, and that said monition be made returnable on Wednesday, the 3d day of October, 1860.

CALHOUN BENHAM,
U. S. Att'y N. D. C.

District court of the United States for the northern district of California.

141 THE UNITED STATES *vs.* ELLEN E. WHITE, and others. } Pala," one square league in Santa Clara county. Land commission No. 638. District Court No. 233.

SAN FRANCISCO, *September* 11, 1860.

NORTHERN DISTRICT OF CALIFORNIA, *to wit:*

A. L. Huyck, William McClay, A. H. Albers, D. B. McClay, and Wilson Springer, being severally duly sworn, depose and say, each for himself and not for the other, that a survey of the "Pala" ranch,

situated in the county of Santa Clara, in said district, was heretofore made by the surveyor general of the United States for the State of California, and the same was approved by him on the 19th day of January, 1860, as we are informed and believe, and the first publication of said survey and approval was made by the surveyor general, on the 15th day of August, 1860, in pursuance of the act of Congress of June 14, 1860; and affiants say they are informed and believe that heretofore, to wit, on the first day of September, 1859, on motion of the attorney of the claimants of said ranch, an order was made by said court requiring the said survey to be returned to this court for examination and adjudication; but no examination or confirmation of said survey has yet been made by this court, to our knowledge. Affiants further say that they are citizens of the
142 United States, and residents of the county of Santa Clara; that they have settled with their families and located in good faith upon lands within said county, which they aver belong to the public domain of the United States, and to which they have acquired a title, as they believe, by pre-emption under the laws of Congress. And affiants claim to have an interest in said lands under such pre-emption and settlement, and aver that the said survey is erroneous; that the exterior boundaries of the Pala ranch, as established by the said survey, should, but do not conform to the said boundaries as the same are set forth in the decree of said court confirming said ranch to the claimants; and affiants aver that the lands embraced within the exterior boundaries established by said survey were never confirmed to the claimants; that the quantity of land confirmed to said claimants by this court was only one square league of land; and affiants aver that the quantity of land contained within the boundaries established by said survey is nearly two square leagues; and affiants pray that they may be permitted to intervene in the name of the United States, and be heard in opposition to said survey; and
143 they further pray that an order be made by this court requiring the said survey to be returned into this court for examination and adjudication.

Subscribed and sworn to before me this 6th day of September, 1860.

WM. McCLAY.
A. L. HUYCK.
D. B. McCLAY.
A. H. ALBERS.

From the best of my information, I believe this to be correct.

WILSON SPRINGER.

Sworn to and subscribed before me, this 6th day of September, A. D. 1860.

ARTHUR SHEARER,
Justice of the Peace,
San José, Santa Clara county, California.

Endorsed: Filed September 11, 1860.

W. H. CHEVERS, *Clerk.*

144 *Order to return survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 11th day of September, in the year of our Lord one thousand eight hundred and sixty.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases, district court No. 233; land com. No. 638.

And now at this day, on application of Calhoun Benham, attorney for the United States, it is ordered that the surveyor general of the United States for California return into this court, on or before Wednesday, the 19th day of September, A. D. 1860, his official survey and plat of the land finally confirmed in the above entitled cause, known as "Pala," and situated in the county of Santa Clara, in said
145 district. And it is further ordered, that the United States marshal for this district serve upon the said surveyor general, without delay, a certified copy of this order, and make due return hereon.

Endorsed: Marshal's office, San Francisco, Sep. 11, 1860. Personally served by copy on J. W. Mandeville, U. S. surveyor gen'l for California. P. L. Solomon, U. S. Marshal, by S. Lamkin. Returnable 19th Sept., 1860. Issued 11th Sept., 1860. Filed Sept. 12, 1860. W. H. Chevers, clerk.

146 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 233, to Charles White, known as "Pala," and situated in the county of Santa Clara, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 3d day of October, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene
147 for the protection of such interest, or their defaults will be

taken. And what you shall have done under this writ do you then and there make return thereon.

Witness, the Hon. Ogden Hoffman, judge of said court, at San Francisco, this 11th day of Sept., A. D. 1860.

W. H. CHEVERS, *Clerk.*

The within monition was received by me on Tuesday, the 11th day of September, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice for 3 consecutive Wednesdays in the San Francisco Herald, commencing on the 12th day of September, 1860; and for 3 consecutive Saturdays in the San José Tribune, a paper published nearest the land, commencing on the 15th day of September, 1856.

Dated San Francisco, Oct. 3, 1860.

P. L. SOLOMON,
U. S. Marshal.

Endorsed: Returnable 3d October, 1860. Issued Sept. 11, 1860. Filed October 3d, 1860. W. H. Chevers, clerk.

148 *Order on return of monition.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the third day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases, district court No. 233; land com. No. 638.

And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause that he had given due notice as therein commanded, on motion of Mr. Ryland, attorney for the claimants, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest. The U. S. attorney appeared for the United States and John J. Williams for the
149 claimant. Porter and Sawyer appeared for T. M. Leavenworth and Nathan Porter. And on motion, it is ordered that they be allowed five days to make showing of their right to intervene herein; and no other party appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed October 3, 1860.

W. H. CHEVERS, *Clerk.*

Affidavit of Nathen Porter.

In the district court of the United States in the northern district of California.

In the matter of the survey of the Pala rancho, now pending in said court.

Nathen Porter, on oath, says that he is the attorney and counsel of T. M Leavenworth in the matter of said survey; that said Leavenworth claims to be the owner in fee of about five hundred acres of land covered by said survey; that this affiant has examined the title deeds of said Leavenworth to said property, and that he be-
150 lieves said Leavenworth has a good and valid claim to said land; that he has examined the decree of the land commissioners and the decree of this court confirming the grant to the claimant for said Pala rancho, and that said survey has not been made in accordance with said decree; that the same covers the said land of the said Leavenworth, of which said land he has been the owner in fee since the year 1849.

And this affiant says that he makes this affidavit for the reason that the said Leavenworth is without the county of San Francisco, and he cannot make the same in the time ordered for filing affidavit herein, and upon inspection of said title deeds of said land claimed by said Leavenworth.

NATHEN PORTER.

[SEAL.] Subscribed and sworn to before me this 5th day of October, 1860.

JAS. RICE,
Notary Public.

Endorsed: Filed Oct. 5, 1860.

W. H. CHEVERS, *Clerk.*

151 *Exceptions to right of Leavenworth to intervene in this cause.*

In the district court of the United States in and for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, Admr., &c. } In the matter of the survey of the Pala rancho.

And now comes the said claimants by their attorneys, Thornton, Williams, and Thornton, and excepts to the right of T. M. Leavenworth to intervene in this cause, because they say that the said Leavenworth has no title or right to any lands within the lines of the official survey of the said rancho, nor in any lands adjoining the same; nor has he any such interest in any such lands as entitle him

to permission or right to intervene in this cause and the provisions of the act of Congress approved June 14th, 1860.

THORNTON, WILLIAMS & THORNTON,
Att'ys for Claimants.

Endorsed: Filed Oct'r 9, 1860.

W. H. CHEVERS, *Clerk.*

152 *Exceptions of T. M. Leavenworth.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE *et al.* } No. 233.

In the matter of the survey of the "Pala rancho."

And now comes T. M. Leavenworth by his attorneys, Porter and Sawyer, and excepts to said survey:

1st. Because a portion of the lands covered by said survey are now, and were at the time the original grant in said cause was made. land of and belonging to the pueblo of San José; and the decree of confirmation in this cause expressly reserves the rights of said pueblo.

2d. Because a portion of the land formerly belonging to and which composed a part of said pueblo of San José, as aforesaid, to wit, a tract of five hundred acres, more or less, and designated as lot 74 on the plan of five hundred acre lots of said

153 pueblo, was conveyed by the alcalde of said pueblo on the 23d day of September, 1857, to one Henry Bee, and afterwards, on the 31st day of January, 1848, conveyed by said Bee to said Leavenworth, who since said 31st day of January, 1858, hitherto has been and now is the owner in fee of said lot or tract of land No. 74.

3d. Because the said survey is not made in accordance with the decree of confirmation entered in said cause, but in violation thereof; that the same covers other lands than that originally granted to the claimants or their predecessors in interest, and covers the said land conveyed as aforesaid to said Henry Bee and now owned by this claimant; that said survey does not cover and include the land of which juridical possession was given to the original grantee of said Pala ranch, but covers and includes other lands which were never in possession of said or any person holding under him, including said land of this claimant.

4th. Because said survey includes within its exterior limits a greater quantity of land than was confirmed to the claimants by the decree of final confirmation.

154 5th. Because the grant of said rancho to Higuera by the Mexican government was for *one* league, including the *hills* to the east, and the conveyance to White was for less than the entire

tract originally granted, but exclusive of the hills; and the present survey embraces one entire league to the present claimants.

6th. Because the lines of the survey are not run in accordance with the original grant nor said decree, but the northern and southern lines of the same are extended westerly beyond the true western bounds, and much further than the decree specifies or requires; and said survey is also extended south further than is required by said grant or said decree.

7th. Because the objects mentioned in the act giving juridical possession and the decree of confirmation, to wit, the stream on the north and the one on the south, and the marked tree at the northwest corner and the one at the southwest corner, are formed upon the ground to conform to a remarkable degree of accuracy
155 with the measurement and distances given in said act of possession and said decree, yet the southern line and said marked trees are disregarded in said survey now in contest.

8th. Because there is a sufficient quantity of land which may be included in as survey, if made in accordance with said decree, to include all that the decree calls for, and at the same time leave to this claimant all of said tract claimed by him as aforesaid, and thus save to both parties their rights.

Wherefore this claimant prays this honorable court to reject and set aside said survey, and cause a new survey of said rancho to be made in accordance with said final decree of confirmation, and in a manner and by such metes and bounds as will give to this party his rights in the premises by leaving said tract so claimed by him as aforesaid without the boundaries of said survey.

PORTER & SAWYER,
Attorneys for said Claimant, T. M. Leavenworth.

Endorsed: Filed Oct. 12, 1860.

W. H. CHEVERS, *Clerk.*

156 *Claimant's exceptions to survey.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, admx. of Charles White, dec'd. } No. 233.

In the matter of the survey and location of the rancho Pala.

And now comes the said claimant by her attorneys, Thornton, Williams, and Thornton, and excepts to the official survey filed in this case, because she says the said rancho was duly surveyed long prior to the 7th day of July, 1846, under the authority of and according to the laws and customs of the Mexican government, and the corners of the said lands judicially established, to wit, on the day of , as appears by the record of judicial measurement and possession filed in this case.

That the said survey made and approved by the surveyor general of the United States is not in accordance with the final decree
157 of confirmation in this cause, nor to the said record of measurement and possession referred to therein, but contains a less quantity of land.

Wherefore, she prays that the said official survey of the said surveyor general may be set aside, and a new survey ordered to be made, according to the said record of judicial measurement, and including all the lands of which possession was given as aforesaid by the Mexican government.

THORNTON, WILLIAMS & THORNTON,
Atty's for Claimant.

Endorsed : Filed Oct. 13, 1860.

W. H. CHEVERS, *Clerk.*

Order to file exceptions of U. S. to survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 11th day of December, in the year of our Lord one thousand eight hundred and sixty.

Present : the honorable Ogden Hoffman, district judge.

158 THE UNITED STATES
v.
CHARLES WHITE. } D. C. 233. L. C. 638.

And now, at this day, comes Calhoun Benham, esq., U. S. att'y, and moves the court for permission to file exceptions on the part of the U. S. to the survey in this cause; whereupon it is ordered by the court that the said exceptions be filed, and made a part of the record of this cause in this court.

Endorsed : Filed Dec. 11, 1860.

W. H. CHEVERS, *Clerk.*

Exceptions of U. S. and Wm. McClay et al.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
THE WIDOW AND HEIRS OF CHARLES WHITE. } No. 233.

Now comes Calhoun Benham, district attorney for the north-
159 ern district of California, representing the United States, and for and on behalf of the United States, and for and on behalf of William McClay and others, whose affidavit has heretofore been filed, and for and on behalf of the city of San José, and of all per-

sons interested under or through said city and the United States, and specifies the following objections to the survey of the rancho Pala, lately made by the United States surveyor general, and filed in this court on the day of , A. D. 1860.

1st. Said survey embraces within its exterior limits more land than was confirmed to the claimants by the decree of final confirmation.

2d. The grant to Higuera by the Mexican government was for one league of land only, including the hills to the east, and the conveyance to White was not of the entire grant, but was exclusive of the said hills, yet the survey embraces one league to the present claimants.

3d. Confirmation was to the claimants by measurement of
160 distances, and the northern and southern lines of the said survey, and extended much farther west than that the distances specified in the confirmation, and the eastern and western lines of said survey, and extended much farther south than the distance specified in said decree of confirmation.

4th. The objects mentioned in the act of judicial possession, and the decree of confirmation, to wit, the stream on the north and the line on the south, and the marked tree at the northwest corner, and the line at the southwest corner, and formed upon the ground to conform to a remarkable degree of accuracy with the measurement and distances given in said act of possession and said decree, yet the southern line and the said marked trees are utterly disregarded in the said survey now in contest.

5th. The said survey embraces more than half a league of land on the west and south of the Pala grant, which belongs in part to the city of San José, and in part to the United States and those holding under them.

161 6th. Said survey does not conform to the grant to Higuera, nor to the judicial possession of the premises delivered by Pico, nor to the conveyance to which, nor to the decree of confirmation, but disregards the whole of them and the natural objects upon the ground.

7th. The decree of confirmation expressly reserves the rights of the pueblo of San José, and yet on the western side of the survey land is embraced that necessarily forms a part of pueblo lands.

CALHOUN BENHAM, *U. S. Att'y.*
L. ARCHER, San José,
Att'y for McClay et al.

Endorsed: Filed Dec. 11, 1860.

W. H. CHEVERS, *Clerk.*

Order allowing U. S. two weeks to close proofs.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 12th day of De-
162 cember, in the year of our Lord one thousand eight hundred and sixty.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
CHARLES WHITE, adm'x.

On motion of John J. Williams, esq., of counsel for claimants, the U. States district attorney being present and assenting thereto, it is ordered that the evidence in this cause, in support of the exceptions filed in the name of the U. States, be taken within two weeks from this date; said exceptions being filed by leave of court, after default, upon the terms that said evidence be taken within the time aforesaid.

Endorsed: Filed December 12, 1860.

W. H. CHEVERS, *Clerk.*

163 *Dep. of John T. Pyle for United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
CHARLES WHITE.
In land cases, dist. court No. 233; land com. No. 638.

Be it remembered, that on this 24th day of Dec'r, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared John T. Pyle, a witness produced in behalf of the United States in the above-entitled cause now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: C. Benham, esq., U. S. att'y, and L. Archer, esq., for U. S.; John J. Williams, esq., for claimant; Porter and Sawyer for T. M. Leavenworth, under objection by Mr. Jno. J. Williams.

164 Question 1st. State your name, age, residence, and occupation.

Ans. John T. Pyle; age, 34; residence, Santa Clara co.; occupation, cattle-man.

2d. How long have you resided in Santa Clara co.?

Ans. I have resided in that county the largest part of the time since 1847. For some three years, 184 , 1849, and 1850, I was in the upper country. In 1852 I was out of the country a great deal. I considered that country my home during all that time.

3d. Are you acquainted with the tract of land in that county called the Pala rancho?

Ans. I am.

4th. When did you first know it?

Ans. In 1847.

5th. If the boundaries of that rancho were pointed out to you at any time, state when and how, and by whom.

165 Ans. Juan Higuera went around the ranch with me in the fall season of 1847.

(Question and answer excepted to by att'y for claimant on the ground that the testimony is illegal and incompetent.)

6th. Where was Juan Higuera living at that time?

Ans. I think he made his home in the town of San José.

(Objected to by att'y for claimant as irrelevant.)

7th. Describe those boundaries as pointed out to you by Juan Higuera, giving a statement of the circumstances under which it was done.

(Same objection by att'y for claimant.)

Ans. Juan Higuera wanted to borrow some money on the ranch. He came by where I lived, and invited me to take a ride to see it. I went with him, and we went down near where the old

166 adobe was then standing. We took an easterly direction from there to the summit of the mountain. When we reached the summit, we proceeded along the summit in a northwesterly direction, until we came to a pile of stones on the highest peak there is in that part of the range, which he told me was one of his corners. Then we followed along down nearly in a direct course, until we reached where the penitencia comes out of the mountains. We went down the penitencia some distance, I should think about 1,000 yards, and there came to a pile of stones, which he called a corner of his lands; then we struck off from the penitencia in a southeasterly course, until we came to a black burnt snag, which he said was on or about the line. This ranged back close to the adobe again; we did not follow any further. I was not versed in the language, but understood what a corner was, and what a line was. I did not understand the language thoroughly, but understood that much about lines and corners. He told me he wanted to go and show me his land.

167 8th. Was he pointing out to you the boundaries of the whole Pala rancho, or only a part of it?

(Same objections by attorneys for claimant.)

Ans. He called it the Pala ranch, when we were around together.

9th. Describe particularly the locality of the old adobe, of which you have spoken, with reference to any arroyo, or to any other object that will enable us to understand its position.

Ans. A creek came out of the mountains about 400 yards nearly directly east from where the old adobe stood, as near as I can now recollect; and there was a grove of timber of several trees, that stood some 400 or 500 yards to the southwest of where that adobe house stood?

10th. Is the arroyo of which you have spoken the first arroyo south of the penitencia?

Ans. As near as I can recollect, there were two, and perhaps three smaller ones between this one and the penitencia; this one is the first large one that runs from up the mountains for any distance.

168 11th. State what you know, if anything, about there being trees on the arroyo, of which you have spoken of; and if so, what kind of trees.

Ans. There was considerable timber along the creek of different kinds; there were sycamores and other kinds on the mountain, a steep bluff covered with live oak.

12th. Describe the locality of the burnt black snag you have spoken of with reference to some object which will determine its locality.

Ans. It lay to the north, a little west of north from the adobe, about a 1,000 yards; there were scattering trees about the snag.

13th. State if you made any calculation of the quantity of land embraced within the boundaries of which you have spoken, that was valley land; and if so, how much was there?

(Objected to as irrelevant by att'y for claimant.)

Ans. I made no measured calculation; I supposed, from rid-

169 ing over it, there was about half a league of valley land.

14th. Who is the Juan Higuera of whom you have spoken?

Ans. He said he was the son of the old man Higuera, to whom the ranch was given; others have also told me so.

15th. State if there is another arroyo south of the one of which you have spoken; and if so, how far south?

Ans. There is another, perhaps a half or three quarters of a mile.

16th. By what name is the arroyo known, which you have spoken of as one of the boundaries?

Ans. I don't know.

Cross-examination.—Questions by att'y for claimant.

17th. When did you first come to California?

Ans. I think I landed in Johnson's ranch, Sacramento valley, on the 15th day of October, 1846.

170 18th. Where did you reside prior to your first residence in Santa Clara?

Ans. I was with Frémont's battalion five months; was discharged at Los Angeles, and from there returned to the American fork, near Sacramento. I got back there about the 1st of April, 1847. I staid there, I suppose, some five or six weeks, and returned to San José, I think, some time in July.

19th. Where, and in what parts of the county of Santa Clara, did you reside?

Ans. I resided about two months in the lower end of the town of San José; then I moved across the Coyote, near the point of willows, called the Sausal, easterly from the town. I continued to reside there until the gold fever broke out in 1848, when I went to the mines, returning occasionally, until the latter part of 1852, when I returned permanently, and lived in the town of San José something

over a year. In June, 1854, I left the town and went on a
171 ranch about 9 miles southeast from the town, which is included within the Chaboya ranch.

20th. What ranchos adjoin the Pala ranch?

Ans. That is more than I can tell; if there are any which reach to the line, it is more than I know.

21st. What is the northern boundary of the Chaboya ranch? State it if you know.

Ans. That's more than I know positively. Have never seen it surveyed. I have been told the laguna inside a man's field named Andrews is the northwest corner; not a corner, but the line runs through it. It was a general talk about the time the first confirmation came out of the Chaboya grant that that laguna was on the northern line.

22nd. What was the name of the arroyo about three quarters of a mile south of the arroyo, near the old adobe house?

Ans. I do not know the name of it.

172 23d. Was there any other arroyo between the one last referred to and Chaboya's grant?

Ans. I cannot say. I don't know where Chaboya's line runs.

24th. How many acres of valley land within the limits pointed out to you as before stated by Juan Higuera?

Ans. I made no measurement; I merely supposed at the time there was about half a league.

25th. How many acres would that be?

Ans. I can't tell exactly—some 1,700 or 1,800 acres.

26th. At the time of your conversation with Juan Higuera, could he speak English?

Ans. Very little; there was now and then a word he could speak, such as G—d damn, &c.

27th. Did you hear him pronounce any other English words; if so, what?

Ans. I can't say I ever did.

173 28th. Do you or your family claim any lands or interest in lands within the limits of the official survey of this rancho?

Ans. I do not; I know none of my family do, and I think none of my connexions. Some of my relatives live near the line and claim lands under what is known as the 500 acre surveys; where I was shown by Wallace, the deputy surveyor, that the line did not reach.

29th. Have not all the arroyos, or nearly all to which you have referred, sycamore trees on or near their banks?

Ans. I am not certain about the one to the extreme south; the others have. I have noticed in riding through there that most of the streams have sycamores along them.

30th. Which arroyo of those to which you have referred, do you speak of as the boundary line?

Ans. The one near the adobe house, about 400 yards from it.

174 31st. How many arroyos between the one last referred to and the northern boundary of the Chaboya rancho, as you understand it?

Ans. I can't say where Chaboya's line runs into the mountain; the laguna I spoke of is out in the plain some distance from Chaboya's house. I have an idea that Chaboya's line runs into the mountains so as to take in his house, and between there and the arroyo spoken of in the question there are none of any length running down from the top of the mountains; there are some short gulches and ravines.

32d. State the number of arroyos, large or small, and their names if you know them, between the arroyo spoken of near the old adobe and Chabolla's house.

Ans. Their names I can't tell, nor can I number all the small gulches; there is a small gulch about half or three quarters of a mile south of the one spoken of as in front of the adobe, and there is one still further south which rises near Joaquin Higuera's house from some springs. There are none between this last and Chaboya's house of any account.

175 33d. Did you ever, since 1847, look yourself for public lands in Santa Clara county?

Ans. I have. The first public lands I looked for in Santa Clara county was the surplus thrown off from Weber's ranch, which lays some 12 or 15 miles south of San José in the mountains. I think this was about two years ago. In conversation with Weber himself he told me he had been wrongfully treated as to the survey, and would probably regain the land, and I had nothing more to do with it.

Direct resumed.

34th. How far is Chabolla's house from the arroyo of which you have spoken as running near his house?

Ans. I think the arroyo runs to the south of the house, and right through his yard; I am not positive.

35th. How long have you known that house to be there?

Ans. I have known it to be there since 1853, by seeing it
176 there; don't know when it was put there. In 1847 Chabolla lived at an adobe house that is near two miles west from where his house now is. That would throw the old house where Chabolla lived in 1847, in a little south of west direction from where he now lives. When I speak of Chabolla's old house in 1847, I mean that both Antonio and Anastacio lived there together.

36th. How far from the line of the Chabolla claim you have spoken of was the house in which the Chabollas lived in 1847, and on which side of that line?

Ans. As I understand the direction in which the line runs from the lagoon, it would throw it some half mile or three quarters south.

Examination closed.

JOHN F. PYLE.

Sworn to and subscribed before me this 24th day of December, A. D. 1860.

JNO. B. WILLIAMS,
U. S. Com'r.

Endorsed: Filed Dec. 28th, 1860.

W. H. CHEVERS, *Clerk.*

177 *Dep. of Charles T. Healey for U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases, dist. court No. 233, land com. No. 638.

Be it remembered, that on this 24th day of December, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Charles T. Healey, a witness produced in behalf of the United States in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: C. Benham, United States attorney, and L. Archer,
178 esq., for United States; John J. Williams, esq., for claimant; Porter & Sawyer for T. M. Leavenworth, under objection by John J. Williams, esq.

Questions in behalf of the United States.

Question 1st. State your name, age, residence, and occupation.

Ans. Charles T. Healey; lawful age; residence Santa Clara county; surveyor.

2d. What is your business now?

Ans. County surveyor of Santa Clara county.

3d. How long have you held that office?

Ans. Ever since 1857.

4th. Are you acquainted with the tract of land in Santa Clara county called the Pala rancho?

Ans. I am. I know there is such a rancho.

5th. Have you or not ever examined the boundaries of that rancho?

Ans. I have.

179 6th. State whether you, as surveyor, ever ran the boundary lines of that rancho, and, if so, by what you were guided.

Ans. I made a survey in 1858 for parties living on the rancho, of certain lines between certain natural objects, to see how the distances would correspond with the distances named in the decree of confirmation of the land, a copy of which we had with us.

7th. Did you make a plat or map of the survey then made by you?

Ans. I did.

8th. Look at the document now shown you, and state whether or not it is the plat made by you.

Ans. It is copy. (The plat is offered in evidence by the United States, and is marked by the commissioner "Exhibit Healey No. 1.")

9th. State if the map marked Exhibit Healey No. 1 is a correct and faithful plat of the survey made by you of said rancho in 1858.

Ans. It is.

180 10th. State what natural boundary there is, if any, on the northern boundary of the rancho surveyed by you.

Ans. The foot of the hills, and the Aguage or Penitencia creek.

11th. Describe the point represented on said exhibit as being the northeast corner of the survey.

Ans. It is where the arroyo comes out of the mountains.

12th. Starting from that point, state the distance you run in a westerly direction before you turned to the south.

Ans. 2,160 varas.

13th. If you found any monument or other object there, state what it was.

Ans. I found an oak tree upon which there was an old mark—I think a cross—can't state positively. On reference to my field-notes I find it was a cross.

181 14th. State what examination you made of the marked tree, with reference to the age thereof.

Ans. We cut a block from the tree at the place where it had been marked, and from the number of layers it appeared to have been marked some 20 or 25 years before.

(Counsel for claimant objects to evidence as to blocks, unless they are produced.)

15th. State where that tree stands upon the map, Exhibit Healey No. 1, and state which lines represent the survey made by you.

Ans. The tree is shown on the plat "marked oak tree," near the letter "B;" the red lines on it show the line I surveyed.

16th. In making the western line, running southerly, state how far you ran to the southwest corner, and at what, if anything, did you make that corner?

Ans. I ran 5,143 20-100 varas, to an oak tree marked apparently in a similar manner, in relation to the date, but not with a cross—

182 a blaze only; I am not sure whether it was a cross; it may have been a blaze; it was necessarily indistinct from the time which had elapsed since it was marked.

17th. Was there a grove of trees near? and if so, state how the marked tree stood with reference to the other trees.

Ans. It was the first of a grove, with the exception of one some distance to the left of a line, so far as not to be considered as one of the grove.

18th. What kind of trees were those which composed the grove?

Ans. I think they were all white-oak trees.

19th. State whether there was any natural object on the southern boundary line, or on any part of it, as surveyed by you.

Ans. We ran from the marked tree to a point at the foot of the hills where a creek comes out on the plain. The length of that line was 1,920 varas.

20th. State what you know, if anything, about the trees on said creek, and what kind.

Ans. There are many sycamores upon the creek, and other
183 timber.

21st. State what other line you run in making said survey, and the length and locality thereof.

Ans. A line was run from a point at the foot of the hills at letter A, in red, on said exhibit, to the point where the Penitencia creek comes out into the plain, a distance of 3,948 varas, indicated by red line on said exhibit.

22d. What is the length of a vara?

Ans. $2\frac{781}{1000}$ feet.

23d. The continuation of the last line mentioned by you is dotted with black ink. State the length of that portion of the line.

Ans. I made no measurement between those points; that portion is about 1,700 varas. That line is not a portion of my survey.

24th. State how many acres are included in the survey made
184 by you extending the red line to the southern boundary, as shown by the dotted line.

Ans. Between 1,800 and 1,900 acres; not having closed the line, I can only state approximately. The survey was not made with that accuracy which would be required in locating the ranch.

Adjourned until Wednesday, Dec. 26, 1860, at 10 o'clock a. m.

JNO. B. WILLIAMS,
U. S. Com'r.

SAN FRANCISCO, *Dec.* 26, 1860.

Examination continued.

25th. How far does the marked tree at the northwest corner of the survey made by you stand from the Penitencia creek?

Ans. About six chains; the scale of the plat of my survey is intended to be about 20 chains to the inch.

26th. State what examination you made, if any, on the Penitencia for another marked tree, and whether you found one marked with a cross.

Ans. We found no other tree marked with a cross in that
185 vicinity, nor any tree with any other mark indicating a boundary. We examined the tree said to have been marked by Mr. Wallace, at the time of his survey of the rancho, made a few weeks before. We found no other mark upon that tree except the one which he had made—no old mark. My survey was made in 1858. I did not examine personally each tree separately in that vicinity.

27th. Have you examined the plat of the approved survey in this case now shown you?

Ans. I have.

28th. State the length of each of the boundary lines of the approved survey, and wherein they differ from the survey made by you?

Ans. The boundary upon the Penitencia from the hills to the northwest corner is 2,895 varas in length; the line from thence to the southwest corner is 8,863 varas; from thence to the hills or southeast

corner is 4,002 varas. I have obtained these distances from
186 the number of chains shown on the official plat reduced to varas; a straight line from the southeast corner to the first remad point on the Penitencia, according to the scale of the map, would be 10,147 varas, about.

29th. State what you know, if anything, with regard to the approved survey in this case, including any portion of lands known by the name of pueblo farm lands; stating the number of lots so included, if you can, and about the number of acres.

Ans. It would include several of the lots surveyed in 1847 by Mr. Hutton as the pueblo lands of San José, and called 500 acre lots, but I cannot state positively to what extent. I think it would include about half of lot No. 72, a part of No. 61, and all of Nos. 73 and 74. The lots average about 350 acres each.

30th. Examine the point on the plat of official survey on the eastern boundary, near the bend thereon, marked "Ravine Post," written across the line of the ravine with red letters, and state if
187 you recognize that place; if so, describe particularly the ravine and its locality, stating whether it is correctly or incorrectly laid down on the plat.

Ans. According to the scale of the map, it is represented about 30 chains further from the Penitencia than the one I measured, and which is marked D on Exhibit Healey No. 1. Its direction is about the same westerly.

31st. State whether the arroyo which you ran to in making the southern boundary of your survey, on which you state there were sycamore trees, is laid down on the plat of the official survey; and if so, is it correctly or incorrectly laid down?

Ans. There does not appear to be any laid down at the same distance from the Penitencia, as the one which I measured. The ravine referred to as laid down on the official plat may be the one to which I measured, and as my survey was not closed, I may have located it incorrectly.

32d. Did you or not, in making your survey, intend to make a true one?

Ans. The intention was to ascertain distances between cer-
188 tain points as correctly as possible, under the circumstances; but as it was a preliminary examination, it was done in great haste, and the lines were not closed. It was thought to be correct, however, at the time, and I have never doubted but that it was so. I do not think an error so great as 30 chains could have occurred.

33d. If the ravine, of which you have spoken, is not the arroyo to which you measured, is that arroyo laid down on the official plat at all?

Ans. Evidently it is not.

34th. Is there or not between the arroyo which runs near the present residence of Antonio Chabolla and the Penitencia creek, passing along the foot of the hills, any other arroyo so large or noted as the creek you have spoken of as having sycamore trees on it?

Ans. I don't know of any.

35th. State if there be any object near the arroyo on which
189 the sycamores stand, that would attract the attention of a surveyor or be properly laid down on his plat in running a line along the foot of the hills.

Ans. There is a house standing on the south side of the arroyo at the foot of the hills. I have known it to be there since 1854.

Cross-examination.—Questions by att'y for claimant.

36th. For whom did you make the survey to which you have referred, and at whose instance?

Ans. For the settlers upon the rancho, Mr. John P. Henning and many others. At the close of the survey it was paid for by a collection taken up from those who were present and assisted during the survey—settlers.

37th. Who pointed out to you the objects to which you ran in making your survey?

Ans. The same parties last referred to; some 15 or 20 men were out with me.

190 38th. Where did you take your starting point?

Ans. At the point marked with A in red on Exhibit Healey No. 1, on the east line.

39th. Did you go there with the view of making a close and accurate survey, in your official capacity, of the rancho Pala, or simply to measure distances between given points?

Ans. I did not understand that it was to be left to my judgment and discretion to make a location of the rancho. Had that been the case, I should necessarily required evidence as to other matters than came before me on that day.

40th. Did you have with you the grant, the record of juridical possession, and the espediente, or accurate copies of those papers, in making your survey?

Ans. I don't remember that we had anything except a copy of the decree of confirmation.

41st. Was that a certified copy; and if so, by whom certified?

191 Ans. I don't remember whether it was certified or not. I have since examined the decree, and am satisfied that the one we had was a copy. I examined the original on yesterday.

42d. After making your survey did you in any manner test its accuracy; and if so, how?

Ans. I did not. I took it for granted that the parties who claimed, chained correctly.

43d. Who acted as your chainmen?

Ans. I can't state the names of any one of them—different ones at different times, I think.

44th. Were they settlers on the ranch?

Ans. I think they were. I think the assistants on the survey were all of the party of settlers. It is not my custom to make any distinction between parties interested and others in my work generally.

45th. What did you do with the blocks you say you cut out

192 of certain trees at the time of making this survey, and where are they?

Ans. I kept one of them in my office for a long time, until it was taken from there by one of the settlers and never returned. The other one I never had.

4th. How long were you engaged in the field in making this survey?

Ans. Nearly a whole day. We concluded at five or six o'clock—nearly night. We commenced in the forenoon. The survey was made in the month of March, 1858.

47th. What proportion of that time were you engaged with chain and compass in making your survey?

Ans. About all of the time. It was a pretty hard day's work. We had no monuments to make, and consequently were not detained along the line, as we generally are in surveying—no trees to blaze as we passed.

45th a. Did you know anything with regard to the bounda-
193 ries of this ranch other than what you were told and shown by the settlers who were with you on that occasion?

Ans. I cannot say that I had heard definitely anything about the boundaries as regards natural objects upon the lines and corners. I knew the general location of the rancho by hearsay only.

46th a. What do the squares of dotted lines upon your plat indicate?

Ans. Approximately, the position of the lots referred to as surveyed by Hutton in 1847.

47th a. What is the superficial contents of the official survey in this case, in acres?

Ans. I have no doubt the quantity is correctly marked on the plat, according to the field-notes on it, to wit, $4,454\frac{80}{100}$ acres.

48th. Why did you not indicate on your map the position of the old adobe house of the rancho?

Ans. Because I did not see it. I don't know where it is.

194 49th. Is the house to which you have referred as being near the foot of the hills, and near the southern line of your survey, included within your survey?

Ans. It is not.

50th. Who lives or did live in said house?

Ans. I don't know.

51st. Whose house was it reputed to be?

(Objected to by U. S. att'y, on the ground that it is incompetent to prove anything in the case.)

Ans. I think I have heard that some of the Higueras lived there, but cannot state when or from whom I so heard.

52d. Do you know when it was built?

Ans. I do not. It looked like an old house when I first saw it.

53d. Do you know the names of the ranchos adjoining Pala?

195 Ans. Upon the side of the Aguage there is a space between it and the Milpitas rancho. According to the official survey of the Pala, this space is on the northern side of the Aguage. On the opposite side it is bounded by the Yerba Buena rancho, granted to Antonio Chabolla.

54th. Do you know the northern boundary of the Chaboya grant as officially surveyed and patented?

(Objected to, on the ground that the patent itself is the best evidence.)

Ans. I know some points on the land, though I have not been to all of them.

55th. Is there any creek, arroyo, or ravine, at or near the northern boundary of the Chabolla grant?

Ans. There is, at the point where the line strikes the mountains.

56th. How many old Spanish or Mexican grants within the asserted limits of the pueblo de San José?

(Objected to as immaterial and incompetent.)

196 Ans. Tularcitos, Milpitos, Pala, Yerba Buena, Laguna Seca, part of Cañada San Felipe, Santa Teresa, part of San Juan Bautista, Los Capitancillos, San Vicente, Ojo de la Coche, part or all of Las Ubas, part or all of Los Llogas, part of Las Animas, part of Solis, perhaps. These are all I can now think of. The rancho nearest the city of San José, without reference to the pueblo land, is Los Coches. I will add to the list named of those within the pueblo lines the rancho of Las Posas, confirmed to Pedro Chabolla.

57th. State if you know the name of the arroyo or creek between the Pala and the Antonio Chabolla Rancho.

Ans. I don't know that I have heard any name applied to any arroyo between the Penitencia and Chabolla's house, except in connection with this case. I have heard them both called Sycamore creek; there are two arroyos or ravines, both of which I have heard so called by persons in conversing about this case. I have heard nothing which would give the name to either by general repu-

197 tation. I never heard any but the settlers on the Pala ranch call the most northern one by that name, except Mr. Peck, who perhaps may not be considered as a settler.

58th. How far is the western line of the official survey of the Pala rancho from the old Mexican Catholic church, or main plaza in the town of San José?

Ans. I think about three miles—perhaps a little over.

59th. Have not most of the arroyos about San José sycamore trees on their banks?

Ans. They have.

60th. Did you ever examine the old stump marked at the southwestern corner of the plat of the official survey, or the tree marked at the southeastern corner, as "old boundary marks?"

Ans. I never did; never saw them.

Direct resumed.

61st. What do you understand by the "asserted boundaries of the pueblo of San José?"

198 Ans. I mean the boundaries as claimed on behalf of the pueblo, and well known by general repute as including the ranchos I have named, and defined by certain landmarks, and of

which extent of country I have understood confirmation has been made by the U. S. district court, being the territory claimed by the 40 thieves, so called, or the San José Land Co.

62d. Is or is not the Guadalupe river one of those reputed boundaries?

Ans. To a certain extent it is, from its source in the willows, south of the city, to a point near the bay.

63d. How far is it from the Guadalupe river, opposite the city, to the old Catholic church you have spoken of?

Ans. About 400 yards from the nearest point.

64th. State the direction in which the Guadalupe river is from said church, and the direction of the Pala ranch from the same church.

199 Ans. The river lies southwesterly from the church, and the Pala rancho northeasterly.

65th. Does the Los Coches rancho of which you have spoken lie on the east or west side of the Guadalupe river?

Ans. On the west side.

66th. How many acres make a league of land?

Ans. $4,438\frac{68}{100}$.

67th. What rancho lies next east of the Pala rancho?

Ans. The Cañada de Pala rancho, but I have never examined any of its boundaries.

68th. On which side of the summit of the range of hills running east of the Pala rancho as surveyed is the Cañada de Pala?

Ans. On the east side. There may exist a rancho or claim between the summit of the hills and the Pala rancho; but if there is, I don't know of any survey thereof.

200 69th. State if you have ever heard of a claim to the lands lying between the Pala rancho and the summit of the hills to the east, made upon any other grant than the Pala grant now in question.

(Objected to as irrelevant.)

Ans. I do not remember to have heard definitely anything about it.

Cross-ex. resumed.

70th. When and from whom did you first hear the Rio Guadalupe spoken of as a boundary of the pueblo de San José?

Ans. I think I first heard it during the trial of a case between the owner of the Los Coches rancho and a settler on that ranch in 1857 or 1858. I may have heard it before, but remember it was discussed then.

71st. What is the established practice of the surveyor general of the U. S. when, in closing a survey of a given quantity of land, the line passes through the smallest subdivision of public lands?

201 Ans. I understand that an excess or deficiency, not to exceed 40 acres, is allowed in the returns of surveys requiring a certain quantity to be included, evidently to save the trouble of a resurvey of the closing line.

The witness desires to say that in speaking of the Milpitas rancho in this deposition, he has referred to the Alviso rancho alone, and not to the claim of Nicolas Berreyesa, which is also called Milpitas.

Examination closed.

CHAS. T. HEALEY.

Sworn to and subscribed before me this 26th day of December, A. D. 1860.

JNO. B. WILLIAMS,
U. S. Com.

Endorsed: Filed Dec. 28, 1860.

W. H. CHEVERS, *Clerk.*

202 [Here follow maps Nos. 1 and 2, page 202.]

203 *Dep. of John P. Henning for U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases, dist. court No. 233; land com.
v. } No. 638.
CHARLES WHITE. }

Be it remembered, that on this 27th day of Dec., A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared John P. Henning, a witness produced in behalf of the United States in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present, C. Benham, esq., U. S. att'y, and L. Archer, esq.,
204 for U. S.; Jno. J. Williams, esq., for claimant; Porter and Sawyer for T. M. Leavenworth, under objection from J. J. Williams, esq.

Questions in behalf of the United States.

Question 1st. State your name, age, residence, and occupation.

Ans. John P. Henning; age 46; residence Santa Clara county; occupation farmer.

2d. How long have you lived in Santa Clara county?

Ans. Since September, 1854.

3d. In what part of that country do you now reside; and how long have you resided there?

Ans. Thirteen miles southwest from the town of San José; have resided there two years.

4th. Have you at any time lived upon land included within the official survey of the Pala rancho; if so, when, and how long?

205 Ans. I have; in September, 1854, and until the first part of 1856.

5th. Have you any interest now in the matter of the survey of said rancho?

Ans. I have not.

6th. If you had at any time, state when, and when your interest therein ceased.

Ans. I had an interest in some of the land included in 1854, and until 1858, when I parted with it.

7th. Was that interest disposed of by you in order that you might be a witness in the matter of said survey, or in the ordinary course of business?

Ans. It was sold in 1855. The reason for selling was, I had bought another piece of land near San José.

8th. Were you or not present when Mr. Healey, county surveyor of Santa Clara co., made a survey or measurement of the exterior limits of said rancho? If so, state what you know about that measurement—the objects to and from which the lines were

206 respectively run.

Ans. I was with him. I employed Healey for the settlers on the ranch to make an exhibit of the natural boundaries and landmarks of the Pala rancho, as we understood them, to be shown to the surveyor general, in order that he might refuse to approve a survey made of the same rancho by his deputy, Wallace. Healey commenced at a point near the foot of the hills, and run north to the Aguage, or Penitencia creek, which creek, where it comes out from the mountains, is a point not disputed by any one as one of the boundaries. From that point he run down the Aguage about 2,000 varas to an oak tree marked with a cross, the block from which tree proved said cross to have been made upwards of twenty years ago. (Objected to by att'y for claimant, because the block is not produced, and because the answer is not responsive to the ques-

207 tion.) From that point he went in a southerly direction to the first tree of an oak grove, marked with a smaller cross, the age of which mark I know nothing about; we did not a block out; the distances was between 5,000 and 6,000 varas; I don't recollect precisely; from this last-mentioned corner east, near 2,000 varas to the foot of the hills where Sycamore creek empties into the San José valley. He there made his calculations, and stated it was unnecessary to make any further measurement, as we did not wish to know the particular amount of acres in said rancho.

9th. What paper, if any, did you have with you at the time of running those lines, and by what were you governed in running to and from objects, if by anything?

Ans. We had a decree of the court, which we had compared with Mr. Wallace's instructions—the deputy U. S. surveyor. We found our copy to correspond with his.

10th. Were you ever present at any other surveys of the Pala rancho; and if so, when and by whom were those surveys made?

208 Ans. I was along with Mr. Wallace, looking on, when he made his first survey—I think in the spring of 1858.

11th. State what occurred on that occasion, if anything, in regard to a proposed measurement between specified objects on the boundaries of that rancho?

(Objected to as indefinite, irrelevant, and incompetent.)

Ans. When Mr. Wallace made his last corner, I asked him if he would run by the decree, in order that we might show the surveyor general our views about the rancho. He offered to run the lines for forty dollars. I paid him $20, and promised to pay him $20 more when he commenced the work. In a short time he told me that he would not do it for less than the government was paying him by the mile, which would make it cost over $100. He gave me back my money, and I employed Healey, the county surveyor, to do the work which Wallace had agreed to do.

(Answer objected to as irrelevant and incompetent.)

209 12th. State how intimately you are acquainted with the lines of said rancho as run by Mr. Healey; also as run by Mr. Wallace?

Ans. Whilst living on the land I had stock cattle on every part of it, and am well acquainted with the ground.

13th. State how often, and how particularly, you have examined along the Aguage creek for any other oak tree marked with a cross, or otherwise; and if you have made any such examination, state the result thereof.

Ans. I was with Mr. Wallace, looking for a marked oak tree, when he made his first survey, and showed him this oak tree about 2,000 varas below his corner, where the Aguage leaves the foot-hills. We found no other oak tree marked on the bank of the Aguage, or near it. I was with Mr. Mandeville, surveyor general, over the same ground, and found but the one marked oak tree. I was with Healy over the same ground, and with the same result.

210 I have been over the same ground at different times with the neighbors—settlers; have also been over it with Judge Daniels and Thomas Campbell, who assisted in the survey of the 500 acre lots of the pueblo of San José.

I have been up and down that creek for a distance of from two to three miles, from the point where it leaves the mountains, down into the valley.

I know where Wallace made his northwestern and southwestern corners. I went below the northwestern corner of his survey but a very short distance.

14th. State the character of land over which the line surveyed by Mr. Healey ran from the northwestern to the southwestern corner of his survey, with reference to wet and dry, now and when you first knew the lands.

Ans. The first two-thirds of said line is very gravelly land; the remainder of said line passes through low land, which is covered by the

waters from the Sycamore creek, in time of high waters and heavy rains.

In the year 1854, when I first saw this land, it was covered
211 with a growth denoting wet land. The cultivation of said land for the last six years has changed its appearance.

15th. State what you know, if anything, about the course of the waters from Sycamore creek having been changed.

Ans. That was done before I came to the country.

16th. Describe particularly the marked tree at the southwest corner of Healey's survey, with reference to other trees near there; also, with reference to Sycamore creek, where its waters come upon the valley from the hills.

Ans. It is a large oak tree, and the first of a grove of oaks as you approach from the north, almost directly west from the point of the hills where the Sycamore creek empties into the valley.

17th. State what you observed, if anything, near the line run by Healey from the southwest to the southeast corner of his survey, in relation to buildings, or ruins thereof. If you made any such
212 observation, state on which side of said line those objects were.

Ans. I recollect nothing more remarkable than a pair of old millstones, on or near said line. To the best of my recollection they were about 100 yards north of said line. At the time the survey was made, I do not recollect to have noticed the ruins of Higuera's old house, by which those millstones formerly laid. Previous to this time, I have seen what I supposed to be the ruins of an old building, but it was very indistinct.

18th. How long have you known Sycamore creek, as you call it, by that name?

Ans. Since September, 1854.

19th. State how generally, and by what classes of people, do you know that creek to have been called Sycamore creek by?

(Objected to as incompetent.)

Ans. I have heard it called so by persons living on the creek—by the neighbors generally—since 1854.

213 20th. State if there is any other creek near there which you have heard called Sycamore creek; and if so, when, and by whom?

Ans. I know of no other creek by that name for the distance of ten miles from the Aguage, running south along the range of mountains in which the Sycamore creek spoken of above takes its rise.

21st. State the number of sycamore trees on the creek of which you have spoken, and their locality.

Ans. Where the Sycamore creek passes through the foot of the hills there is as much oak and other growth as of sycamore; from the residence of Mr. Peck, which is on Sycamore creek, for one mile on said stream, nine-tenths of the timber on the banks of said creek is sycamore; and as far up as I am acquainted with the stream, sycamore is the prevailing growth.

19th. Are you acquainted with the arroyo near which Antonio Chabolla now lives?

Ans. I have been on it, near his house.

214 20th. State what you observed, if anything, with regard to sycamores on that arroyo.

Ans. I have never seen any sycamore on it.

21st. How far is that arroyo from Sycamore creek?

Ans. Two miles, as near as I can guess at it.

22d. What is the comparative size of the two creeks, with reference to the amount of water discharged, indentation in the hills, and timber upon their banks?

Ans. I am not sufficiently acquainted with the lower arroyo to give an opinion on the subject.

23d. What kind of oak tree is the one at the northwest corner of Healey's survey, and by what name is that tree known in the Spanish language, if you know?

Ans. I call it white oak; the Spanish call it "roblar."

215 24th. Is there any other kind of tree in this country known in English by the name of oak tree? and if so, state by what name it is known in the Spanish language, if you know.

Ans. The evergreen oak is called by the Spaniards "encino."

25th. What kind of tree is the one at the southwest corner of Healey's survey, of which you have spoken as the first of the grove?

Ans. White oak.

26th. Of what kind are those of the grove?

Ans. White oaks.

27th. State the character of ground over which the line of the official survey runs, from the northwest to the southwest corner thereof, with reference to wet and dry, and in comparison with the corresponding line of Healey's survey.

Ans. Both of these lines run nearly the whole distance over
216 ploughed land; very little difference as to the quality of the soil.

28th. State what examination you made, if any, at any time, for marked trees at or near the southwest corner and the northwest corner of the official survey; and if so, state the result.

Ans. I found no tree at the southwest corner with a mark which I thought had been placed on it as a landmark. At the northwest corner, Mr. Wallace marked an "encino" or evergreen oak. I saw no marks on any trees near by which had the appearance of being more than five or six years of age. I saw one tree with notches chopped in it to receive the ends of rails, which were nailed in it. I believe it was the same evergreen oak marked by Wallace at the northwest corner, at the survey made in the spring of 1858. He marked that tree the first time I knew him to be on the ground.

29th. State the distance and direction of the southwest cor-
217 ner of Wallace's survey, in the spring of 1858, from the corresponding corner of Healey's survey, and the same in relation to the northwestern corners of the two surveys, as nearly as you know.

Ans. Mr. Wallace's southwestern corner was about 2½ miles southwest of Healey's southwest corner; the northwest corner made by

Wallace was about one mile west and down the creek (Aguage) from Healey's northwest corner.

30th. Do you know of any other corners made by Wallace since the spring of 1858?

Ans. I see by the plat of the approved survey that he has changed the northwest corner on the Aguage; the first plat returned to the surveyor general's office had a tree marked for a corner.

31st. State what appeared to be the age of the mark at the southwestern corner of Healey's survey.

Ans. I did not make such an examination as would enable me to say with any certainty. It was an old mark.

218 32d. Are you acquainted with William McClay, of Santa Clara county?

Ans. I don't know the given name of any McClay in the county. I know the old gentleman and his sons.

33d. State if he occupies any land embraced within the official survey; and if so, how long have you known him so to occupy it?

(Objected to as irrelevant.)

Ans. I know that he has occupied several hundred acres—himself and sons together—from 1854 up to the present time.

Cross-examination.—Questions by att'y for claimant.

34th. Where, within the limits of the official survey, did you formerly reside?

Ans. One mile and a half south of the Aguage, between Wallace's and Healey's lines.

35th. What was the character of the claim to that land, or

219 what your title?

Ans. I paid $325 for the improvements on said land; got no title or claim to said land. I believed, after the publication of the final decree in the Pala case, that the land I was on was pueblo land; before that publication I had no opinion on the subject.

36th. Am I to understand, then, that you laid no claim to the land at all?

Ans. Before I purchased the improvements, Wallace and Ryland proposed to sell me some land, part of said rancho. I moved on to said claim and waited for the settlement of the boundaries of said ranch; before they were settled I bought land in the city limits of San José, sold my claim to said improvements, and moved from them to the city of San José.

37th. You say that you sold your claim and improvements; what was the nature and character of your claim?

Ans. Possession; without any certain knowledge of who

220 would become the owners of the land.

38th. Did you not anticipate yourself as becoming the owner of that land?

Ans. I offered to pay Mr. Ryland his price for his part of the land on condition that he got a confirmation.

39th. Did you settle upon that portion of this rancho which was offered to you for sale by Wallace and Ryland, or either of them?

Ans. Mr. Ryland told me that he had never been on that ranch with a view to ascertain the location of his part of the land.

(Questions objected to by U. S. att'y; whereupon claimant's attorney states that the sole object of the questions are to show the relations of the witness to the land in controversy.)

40th. Did Wallace and Ryland, or either of them, ever offer to sell you the identical land upon which you settled?

221 Ans. They did not; they offered to sell me a part of the Pala rancho.

41st. Did you not enter upon the land which you occupied as a settler, and identify your interests with those of the other settlers upon the rancho?

Ans. I went on it as a farmer. I never entered any pre-emption claim, though some adjoining me did. I identified myself and have been with the settlers in opposition to the present survey. I have no interest, except on general principles, to see whether, if a decree gives me a piece of land, another piece can be surveyed.

42d. If you had nor pretended to have any claim to this land, why did you sell it?

Ans. I sold my improvements, which I had purchased and partly made, with the possession of the land, for the sum of $750.

43d. How much land did you claim or sell?

222 Ans. There was between 150 and 200 acres, which I occupied; cultivated some and pastured some.

44th. When, to whom, and on what terms did you sell this land?

Ans. I think it was in the summer or fall of 1856, I sold to Ari Hopper for the sum of $750, payable in 3 years, $250 each year, with the condition that if it was on the Pala ranch he was to pay me nothing for it. He lived on it a few weeks, moved off without paying me anything, and returned the possession to me. I then sold it to Grubb and Baker on the same conditions. The last payment on said land was not made according to agreement, since which time I have had no interest in said matter. The sale was a verbal one.

45th. Did not Grubb and Baker enter upon and take possession of the land under this contract, and make part payments on the same?

223 Ans. They did.

46th. Is not Baker in possession of it at the present time?

Ans. I believe he is.

47th. Did you not buy or assert claim to other portions of this rancho, and sell the same?

Ans. Nothing within one mile of the outside limits of the official survey, that I now recollect of. I bought a pre-emption claim on the bend of Sycamore creek, in Santa Clara co., a mile above the line of the office survey.

48th. Did you not contribute to the expense of Healey's survey, and of the opposition to Wallace's survey?

Ans. I did.

49th. How far is the tree marked as the northwestern corner of Healey's survey from the banks of the Aguage?

Ans. To the best of my recollection, 50 to 100 yards south, opposite a bend in the Aguage, which bend is to the north, and
224 the tree stands in the general direction from the northeast corner of the rancho, into the valley. I never measured the distance from the bank to the tree. The creek just above this tree turns to the north, and then comes in again below the tree.

50th. According to Healey's plat this tree is about three-eighths of an inch from the banks of the Aguage, and Healey states in his deposition that the distance is about six chains. Is he mistaken both in his survey and in his evidence?

Ans. Because the decree did not say the oak tree was on the bank, I did not feel interest enough to measure the distance, and cannot say what that distance is. If Mr. Healey has stated differently, and has measured it, I would believe him.

51st. During what month was it that Wallace was making the survey at which you were present?

Ans. I do not believe I can tell.

52d. Did not that survey include Peck's house?

225 Ans. It did not. As Mr. Wallace showed me his courses and lines on the ground and on his plat, it did not.

53d. In what respect did the survey at which you were present differ from the present official survey?

Ans. The most striking difference which I see is that the southeast corner is placed at the foot of the hills instead of in the valley. The northeast corner appears to be the same corner as on the plat which I saw. On the other plat the southwest corner was laid down as an oak tree, marked; it does not so appear on this one. The quantity of acres included is about the same in both. I don't know whether the other survey followed the Aguage down further or not, but think it did.

54th. How far did you ever follow down the Aguage below Healey's northwestern corner looking for marked trees?

Ans. Between one and two miles from Healey's corner.

226 55th. You found no marked tree?

Ans. None marked with what we took to be a landmark.

56th. Did you see no tree within that distance with old marks or mark on it?

Ans. I examined the south side of the creek, and saw none; did not go on the north side to look.

57th. Were you with Mr. Mandeville on the ground when he was examining this survey with the alcalde who gave the juridical possession?

Ans. I was with Mr. Mandeville, Antonio Maria Pico, and others, as far as they followed the boundaries.

58th. Did you not see Antonio Maria Pico, the alcalde as aforesaid, point out to Mr. Mandeville the tree on the bank of the Aguage,

to which he said he ran and established at the time of giving the juridical possession as the northwestern corner of the Pala rancho?

(Objected to, on the ground that the question assumes that
227 Antonio Maria Pico was alcalde, and that he did deliver judicial possession, and upon the ground that any answer to the question would involve declarations of Pico as to the juridical possession, it not being shown that Pico is dead or without the jurisdiction of the court.)

Ans. I am not able to give a Spanish conversation by any means. I did not understand Pico to dissent from that or the other corner to which we went. I could not give his words.

59th. Did not Mr. Mandeville converse with Pico through a sworn interpreter?

Ans. If he did, it has escaped my memory; Mr. Ryland was the principal speaker.

60th. Does Mr. Ryland speak Spanish?

Ans. Some.

61st. Sufficiently to converse?

Ans. I have heard him say he was not a Spanish scholar. If there was an interpreter there, I have forgotten it.

228 62d. Was not Mr. S. O. Houghton, of San José, there?

Ans. I can't say, certainly, that he was. I think, perhaps, he was.

63d. Was not Antonio Chabolla there?

Ans. He was.

64th. Did not Mandeville, Pico, Chabolla, and others there, have their attention called to the tree assumed as the northwestern corner of Healey's survey?

Ans. I believe we went to the tree, and stopped there on our way down the creek.

65th. Was not their attention called to the tree assumed as a corner at the southwestern corner of Healey's survey?

Ans. No; they would not go to look at it; they didn't go there.

66th. What is the reason they declined going there?

(Objected to, on the ground that their reason is immaterial,
229 and the answer would be mere hearsay.)

Ans. Some of the party said it was time they had their dinner, and wanted to go to San José.

67th. Did Mr. Mandeville tell you the reason he did not go was because he wanted his dinner, and wanted to go to San José; or did he say so in your hearing?

Ans. I do not believe the proposition came from Mr. Mandeville; he agreed, when at the northwest corner as marked by Wallace on his first plat, to go and look at the southwest corner as marked on Healey's plat. After travelling in that direction about one mile he changed his notion and went to San José.

68th. Did not Mandeville and the other parties mentioned, Pico and Chabolla, examine the southeast and southwest corners of the official survey; and were you not with them?

Ans. On that day I saw no object pointed out whilst I was there

as the southwest corner; they had arrived some time before me. At the southeast corner I was with them, and saw an oak tree at
230 the foot of the mountain which had a cross on it.

69th. Had you ever seen that tree and that cross before that day?

Ans. I had not.

70th. Was not that tree at or near the northern boundary of Chabolla's grant?

Ans. It was not far from Chabolla's house; north from it, towards the Aguage.

71st. Do you know where the "Laguna Socayre" is?

Ans. I don't, except what I heard about it yesterday. I don't remember to have ever heard a lake in that valley called by that name.

72d. In which direction was the course of the creek which you call Sycamore creek changed?

Ans. It was changed a little north of west after coming out into the valley, and now runs nearer the Aguage.

231 73d. When and by whom did you first hear that creek called Sycamore creek?

Ans. I never heard it called by any other name. I have heard Americans who have lived in sight of it since 1846 speak of it as Sycamore creek. I never heard Spaniards or Mexicans call it so.

74th. State the names of those Americans.

Ans. A family named Pyles, who were settlers; John Pyles, his father; the widow Pyles and her sons; Smith Peck; Fieldstedt; family named Walls. To give the names of the people there who call the creek Sycamore creek would be to give the names of all who are settled there. I can't recollect particular conversations with them, except with the Pyles and Wallis I have named before.

75th. Are not, or were not, all these settlers on the Pala ranch, or on the adjoining lands; and how many of them have been engaged in opposing this grant and survey?

232 Ans. All that I have named live in sight of it. It is an open country, and a man can see several miles. I don't know of any I have named having paid any money towards opposing the survey. Some of them have testified in the case.

76th. Where is the Sycamore creek to which you have referred as being somewhere about ten miles south of the one you speak of?

Ans. I said I knew of no other of that name within ten miles.

77th. Do you know of any sycamores growing upon any of the arroyos or creeks other than on the one you have specified, between the Aguage and Chabolla's house?

Ans. There is a ravine coming down by Mr. Alden's house with some sycamore on it; half way between the Aguage and Sycamore creek, perhaps. I can't say that I ever noticed any ravine below that with sycamores on it as common growth.

78th. If there were any considerable growth of sycamores
233 between the points indicated, which could be seen as you rode along the foot-hills, is it likely they would have escaped your attention?

Ans. If near the summit of the mountain they would otherwise not.

79th. Did you ever follow up through the foot-hills, into the mountains, the arroyo running north of and close by Chabolla's house?

Ans. Not far.

80th. How far above the oak tree marked with a cross?

Ans. Not above a quarter of a mile.

81st. Did you ever hear in that neighborhood of a creek called the Arroyo de los Alisos, or Alisos creek?

Ans. Of course, I have heard talk about the Arroyo de los Alisos ever since I have heard anything of the grant. I believe in 1854 Mr. Ryland showed me the papers of this grant, and spoke of the alviso being one of the boundaries. Since that I have heard considerable conversation about the Alisos or Sycamore creek.

234 82d. Do you know of any particular creek in that neighborhood which you have heard called by that name—the Arroyo de los Alisos?

Ans. It is as common in that neighborhood to call it the "Alisos" as the "Sycamore."

83d. What creek or creeks did you ever hear called the "Alisos." creek?

Ans. The creek on which Smith Peck lives—none other.

84th. By whom did you hear it so called?

Ans. By the parties named before.

85th. Indicate on the official plat the residence of Smith Peck.

(It is admitted by counsel for U. S., that Smith Peck lives at the southwest corner of section 31, township VI, range II east.)

86th. Was not a large portion of the Pala ranch under fence during the time when you lived there?

235 Ans. Nearly all of it, as shown by the official survey.

87th. In Healey's survey how was the starting point determined?

Ans. We looked for a hillside which faced the north and near the foot of the hills.

88th. How many oak groves on Healey's western line, between the Aguage and his southwest corner?

Ans. I cannot answer this without going over it. There are scattering oaks. Grove is so indefinite, I cannot say how many there are there.

89th. Are there no oak groves on said line between the Aguage and the grove at the southwestern corner of Healey's survey?

Ans. There are some oak trees along the line. I don't know of any cluster close enough to prevent plowing between the trees.

90th. Is there not the stumps and remains of an oak grove at or near the southwestern corner of the official survey?

236 Ans. There is.

91st. Are we to understand from your answer to question 20, that there are no sycamores on the arroyo near Chabolla's house?

Ans. I have never seen any. I have never been up to the head of that arroyo myself.

Examination closed.

J. P. HENNING.

Sworn to and subscribed before me this 27th day of December, A. D. 1860.

JNO. B. WILLIAMS, *U. S. Com'r.*

Endorsed: Filed Dec. 28, 1860.

W. H. CHEVERS, *Clerk.*

237 *Affidavit of C. E. Allen on motion that surveyor gen'l make survey according to juridical possession.*

In the district court of the United States for the northern district of California.

ELLEN E. WHITE, adm'x.
vs.
THE UNITED STATES. } Rancho de Pala.

C. E. Allen, being first duly sworn, deposes and says that he is the husband of said Ellen E. White, and has the charge and management of the above-entitled case. That said case is now pending in this court upon the survey of said ranch as made and approved by surveyor general of the United States. That said survey is not in accordance with the juridical survey made by the Mexican government. That in order to a just decision of the case, he thinks it necessary that a topographical map should be made of all the land within the limits of the juridical possession, and more especially is this necessary, as the settlers upon the land, intervening in the name of the United States, are seeking to limit the confirmation and survey to about eight hundred acres, and have caused a survey to be made
238 of about such quantity and given it in evidence in this case. That he has just apprehension and reason to believe that the said settlers will forcibly resist any such survey by him, as aforesaid, unless it be made under an order of this court. That he deems such survey necessary to an understanding and intelligent decision of the matters in controversy. He therefore prays that this court will order such survey to be made, as being necessary to the exercise of jurisdiction in this cause, upon such terms and under such restrictions as to this court may seem just and proper.

C. E. ALLEN.

Sworn to and subscribed January 22, 1861, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed January 22, 1861.

W. H. CHEVERS, *Clerk.*

239 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present: the honorable Ogden Hoffman, district judge.

Order directing U. S. sur. gen'l to make a survey and plat according to juridical possession.

ELLEN E. WHITE, adm'x of Charles White, dec'd, *vs.* THE UNITED STATES. } Rancho de Pala, No. 233.

On motion of claimant, by his attorney, J. J. Williams, and on reading the affidavit of C. E. Allen, it is ordered by the court that the surveyor general of the United States for the State of California cause a survey and plat to be made of the rancho Pala, according to the record of the juridical possession, a copy of which is contained in the record of this case, showing thereon the original corners established at the time such possession was given, together with such
240 notable objects as the "Montecito Alto" and other points referred to in the original papers on file in this case; said survey to be made by a deputy to be nominated by the said surveyor general, and not by the claimant, but at his cost and expense, so soon as practicable, and to be returned forthwith to this court. The object of this survey being to obtain a knowledge of the topography of the country, and such other information as may be necessary in determining the true location, upon final hearing, of the lands confirmed in this case.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed January 22, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of Smith Peck for U. S.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases, dist. court No. 233; land com. No. 638.

Be it remembered, that on this 26th day of Dec., A. D. 1860,
241 at San Francisco, in the district aforesaid, before me, John B. Williams, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Smith Peck, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Mr. Archer, for United States; J. J. Williams, for claimants; U. S. att'y, for U. S.

Questions in behalf of the United States.

Question 1st. State your name, age, residence, and occupation.

Ans. Smith Peck; age, 40; residence, Santa Clara co.; occupation, farmer.

2d. In what part of Santa Clara co. do you reside?

242 Ans. In the eastern part, at the foot-hills.

3d. How long have you lived there?

Ans. Seven years this May.

4th. Have you ever seen the approved survey of the Pala rancho?

Ans. I have.

5th. Where is your place of residence with reference to that survey?

Ans. The southwest corner of section 31, township XI, range II, east. It is 25 chains east from the nearest point of the eastern surveyed line.

6th. State if there is a ravine, or arroyo, near your residence.

Ans. There is a ravine running about 30 yards to the south of my house.

7th. Please give a full description of that arroyo as to length, size, termination thereof, and the growth, if there be any, in or about it.

243 Ans. It commences at the top of the mountain, passes down by my house, running into the valley. There is water running in the ravine about six months in the year, since 1855. During the two years previous to 1855, the water run during the whole year. There is both oak and sycamore timber on the ravine, extending from the mouth to the summit of the mountain.

8th. How much sycamore is there on that ravine?

Ans. The majority of the timber on the banks is sycamore.

9th. Are you acquainted with other ravines or arroyos for the space of two or three miles above and below the one of which you have spoken?

Ans. I am acquainted with all of the ravines and arroyos for three or four miles each way.

10th. Which is the largest of them all, not including the Penitencia?

Ans. The one I live on.

244 11th. On which one of them, at any time within your knowledge, has stood the greatest number of sycamore trees?

(Objected to as irrelevant.)

Ans. On the one I live on.

12th. Do you know where stands the house in which Antonio Chabolla lives at this time?

Ans. I do.

13th. Is there a ravine near his house?

Ans. There is, on the northwest side of his house?

14th. How intimately are you acquainted with that ravine?

Ans. I have been on it several times, about two-thirds of the way up only.

15th. State what you know, if anything, about sycamore trees standing on that ravine.

Ans. I have never seen any on that ravine.

245 16th. How near to the valley do the sycamore trees extend on the ravine which runs near your house, or do they extend into the valley?

Ans. There are some sycamores a short distance outside of the hill.

17th. What is the name of the ravine which runs by your house, if it has any?

Ans. I have always known it by the name of Sycamore creek.

18th. How long since you first knew it by the name of Sycamore creek?

Ans. Since I first settled there, seven years ago last summer.

19th. Is there any other ravine in that neighborhood that you have known to be generally called Sycamore creek, by the residents thereabout?

Ans. About three years ago I heard the one on the north side of Antonio Chabolla's called Sycamore creek.

20th. Did you ever hear it so called before that time.

246 Ans. No; I did not.

21st. What is the direction of the ravine near your house.

Ans. It runs in a westerly direction.

22d. Look at the official plat and state whether the ravine which you say runs by your house is laid down thereon, taking the position of that ravine with reference to the southwest corner of section 31, as marked on the plot.

(Objected to by att'y for claimant, because it assumes a point on the plat as the position of the ravine running by the house of the witness, and at which no ravine appears.)

Ans. I see no ravine laid down on the plat running in that direction which would pass by my house.

23d. What direction from the extreme southwest corner of section 31 is the point where the ravine that runs by your house crosses the eastern line of the official survey?

247 Ans. In a southwest course until it reaches the valley, then it turns nearly west.

24th. Describe as particularly as you can the character of the land westerly from the place where the creek enters the valley.

Ans. After about three-quarters of a mile from the foot-hills the creek spreads out in the valley and formerly made a spot of low, wet ground, forming a lagoon.

25th. State the appearance of the low wet ground of which you have spoken when you first saw it, in comparison with its present appearance.

Ans. At the present time it is all dry land. It has been ploughed and cultivated for the last five years. In 1853, when I first saw it, it was a low, wet piece of ground, water standing over portions of it.

26th. State what you know, if anything, with regard to the changing by any person of the water from the ravine running by your house.

248 Ans. In 1853 and 1854 a part of the water in the creek

was turned from its channel by Manuel Higuera for the purpose of irrigation. Since 1855 the bed of the creek has been changed, so it runs more to the southwest. In turning the water from its former channel it was turned from that low ground on which it formerly spread over.

Present: Mr. Archer for the United States; Gen'l Wallace and J. J. Williams, for claimants; U. S. att'y, for U. S.

Examination resumed—30*th Jan'y*, 1861, 10 o'clock a. m.

27th. Do you know the locality of the Aguage or Penitencia creek?

Ans. I am acquainted with the creek called Aguage, or Penitencia.

28th. How long and how intimately have you known it?

Ans. for seven and a half years, and I have been on the creek several times every year during the last seven years.

249 29th. State whether you have at any time seen an oak tree on or near that creek with an old mark on it; if so, state the locality of the two with reference to the hills and other objects, the kind and description of tree, the kind and age of the mark, as nearly as you can.

Ans. When Mr. Healey made the survey for the squatters, he surveyed to an oak tree; they cut into it and found an old mark. It looked like a cross, and from the number of layers which was grown over the old mark, it showed it was marked some twenty years before that survey; the tree stands on the south side of the creek, I think about 2,500 varas from where the creek comes out of the hills.

(Answer objected to by Gen'l Wallace as to the character of the mark upon the tree and its supposed age, because the block is not produced.)

30th. Was the mark on the tree visible before the cutting?

Ans. I do not recollect whether it was or not.

250 31st. State what has become of the block cut out of that tree, if you know.

Ans. Mr. Healey took the block at the time it was cut from the tree, and I have not seen it since.

32d. State what search you made, if any, for other marked trees on or near the Aguage; and if so, what was the result?

Ans. I do not remember of their finding any other trees with an old mark upon them. I searched for other trees, but did not find any having an old mark upon them; I think we searched up and down the creek some 200 yards from the marked tree to which I have referred.

33d. State what you know, if anything, in regard to another tree marked, in a southerly direction from the one of which you have spoken; if there was such, state where and what kind of tree.

Ans. On the line they ran in a southerly direction they 251 came to an oak tree standing by Chico Bernal's house, which we cut into and found an old mark on it.

34th. About how far is that tree from the other marked tree of which you have spoken?

Ans. About 5,000 varas.

35th. What is the age of the mark on the last tree you have spoken of, if you know?

(Objected to by Mr. Williams, unless the block taken from the tree is produced.)

Ans. There was no block cut from that tree. There was merely a cut made in the tree to ascertain the age. I do not remember what the age was. It was an old mark.

36th. Are those two trees yet standing?

Ans. The one at Chico Bernal's house is standing. I think the one on Penitencia creek is cut down.

37th. Do you know it to be cut down, or only think so?

252 Ans. I don't know only by hearsay.

(Answer to question 36 objected to as being only hearsay testimony.)

38th. In what direction from the point at which the arroyo running by your house enters the valley, is the tree which you spoke of as being near the house of Chico Bernal, and how far?

Ans. The tree stands in a westerly direction from where the arroyo comes out of the hills; the distance is about $\frac{3}{4}$ of a mile.

39th. State what you know, if anything, in regard to the locality of the ruins of the old Higuera establishment.

Ans. About half way from the hills and Chico Bernal's house there are the remains of an old adobe which I have always understood to be the house where Higuera formerly lived.

(Answer objected to, latter part by Gen. Wallace, because it is hearsay.)

253 40th. On which side of a straight line between those two points are the ruins of which you speak?

Ans. I think they are about 50 yards on the northwest side.

41st. State what relation the marked tree near Chico Bernal's bears to the other trees in that vicinity.

Ans. Going from the Penitencia in a southerly direction it is the first oak tree on that line that you would come to; a short distance beyond, a southerly direction, there is a grove of oak trees.

Cross-ex'd by counsel for claimants.

42d. Were you present when Healey made his survey to which you have referred, and did you or did you not contribute to the expense of that survey?

Ans. I was present when all of the surveys were made except part of the line along the foot-hills. I was present when Healey made his survey. I did not pay anything.

254 43d. Have you not been active with others in opposition to the official survey of this ranch?

Ans. No, I have not.

44th. What interest, if any, did you have in this survey?

Ans. I had no interest whatsoever in it.

45th. What was your object, then, and by what motive were you

governed, in attending all the surveys of this ranch, and searching for and cutting into marked trees?

Ans. I had no particular object in view, only to see where they would run the line.

46th. If you had no interest in the survey, what matter to you where they ran the line, and why did you spend your time in such examinations?

Ans. I had no other object than to gratify my curiosity.

47th. You have stated that the marked tree near Chico
255 Bernal's house was about 5,000 varas from the arroyo Aguage; how did you ascertain that fact?

Ans. I asked Mr. Healey when he ran the line to that tree, and he told me that that was about the distance.

48th. Describe the oak grove which you say is just below the tree last referred to. How many trees are there in it, and how far apart?

Ans. I do not know how many trees there are in the grove. I think they cover a space of perhaps two acres. Some of them stand close together; others stand far apart.

49th. Is it not a fact that there are not more than 6 or 8 trees in what you have called a grove, and that they are sufficiently far apart to be ploughed between?

Ans. I am of the opinion there is about 20 trees in the grove. I think they have ploughed only a part of it.

50th. Please explain how it is that 20 trees, supposing that there is that number, can cover two acres of ground?

256 Ans. Some of the trees stand very close together; others are separated 20 or 30 yards.

51st. Would you call 20 trees scattered over two acres of ground a grove?

Ans. I should call it a grove when there are no other trees in the neighborhood of it.

52d. Do you know where, on this rancho, is the laguna de Socayre?

Ans. I don't know any lagoon by that name.

53d. Did you ever hear of any laguna on this rancho called by a Spanish, Mexican, or Indian name? If yea, what was the name, and where is the laguna?

Ans. There was formerly a lagoon on the plains formed by the waters of Sycamore creek, on the creek that runs by my house, about a mile from where the creek comes out of the hill. The Spanish name I do not recollect. I have heard it called by a Spanish name.

257 54th. What direction is this laguna from the point where the creek comes out of the hill?

Ans. In a westerly direction.

55th. Is there any other laguna than this within the limits of the official survey? If so, where is it and what is its name?

Ans. During the rainy season there is a lagoon formed about half a mile southeast from the grove, south of the tree at Chico's house,

which remains there during the rainy season. I never heard it called by any name.

56th. From what source is the laguna last referred to supplied?

Ans. I do not know of any way it is supplied except by the drainage of the surrounding country.

57th. From what source is the laguna first referred to by you, as being about one mile from the point where the stream flowing by your house leaves the mountain, supplied?

Ans. It is supplied by the stream flowing by my house.

258 58th. Is there any other laguna or lagunas than the two that you have mentioned within the limits of the official survey?

Ans. I know of no other.

59th. Which side of the south line of Healey's survey is the laguna of which you have first spoken?

Ans. It is on the northwest side of that line; at the mouth of the creek flowing by my house.

60th. Is there any laguna there now, or is the land in a state of cultivation?

Ans. There is no lake there now, and I think the land is nearly all cultivated; and there has been no lake there since 1855.

61st. Is not this laguna in a line almost west of the old ruins of which you have spoken?

Ans. I am of the opinion it is.

Deposition closed.

SMITH PECK.

Subscribed and sworn to before me this 30th day of January, A. D. 1861.

259 JNO. B. WILLIAMS,
U. S. Comm'r.

Examination of witnesses postponed till to-morrow, 31st January, 1861, at 10 o'clock a. m.

Endorsed: Filed February 2, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of Peter Quivvey on part of claimants.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases, district court No. 233; land com. No. 638.

Be it remembered, that on the 31st day of January, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, William H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil

causes depending in the courts of the United States, pursuant
260 to the acts of Congress in that behalf, personally appeared Peter Quivvey, a witness produced in behalf of claimants in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: General Wallace and J. J. Williams for claimants; Mr. Archer for U. S., and U. S. attorney for U. S.

Questions in behalf of claimants.

Question 1st. What is your name, age, residence, and occupation?

Ans. Peter Quivvey; fifty-three years; Santa Clara; farmer and stock raiser.

2d. When did you first come to this country; and where have you resided since that time?

Ans. I came here in 1846. I lived the first year at Sutter's old fort. Since September, 1847, I have lived in what is now
261 Santa Clara county.

3rd. Do you know the rancho called Pala, in said county? If yea, how long have you known it, and how far have you resided from it?

Ans. I do. I have known it since 1851. I live about 4 miles from it, where I have lived since 1847.

4th. Do you own any land near this rancho, of which you are now and have been for some time in possession?

Ans. I do own land east of it. I own an interest in the Cañada Pala. My land is bounded by the hills, which I always considered the eastern boundary of the Pala ranch, ever since I have known it.

5th. Do you know what is, and if so, state it, the southwestern corner of the Pala ranch?

Ans. I used to know where there stood a stump or white post, which was pointed out to me as the corner of the Pala ranch.
262 (Answer objected to by Mr. Archer, on the ground that it is based upon hearsay.)

6th. How far does this stump stand from the house of Anastasia Chabolla?

Ans. As near as I can come at it, I think about 150 to 200 yards, in a northeast direction.

7th. What direction did the southern line of the rancho Pala run from this stump?

Ans. I would think it would run a little south of east to where the Sycamore creek runs out to nothing.

8th. Do you know whether or not there is any marked tree at or near that locality?

Ans. There is a live-oak tree standing not far from the mouth of that little creek, marked with a cross, on the north side, I think; it stood there some 2 or 3 years ago, but don't know if it stands there now.

263 9th. How far is this creek from the house of Antonio Chabolla?

Ans. I would suppose that it is about 100 yards, as near as I can guess now, north of Antonio Chabolla's house, where he now lives.

10th. What is the name of that creek?

Ans. It has been called by the Americans Sycamore creek, and by the Spaniards Arroyo Alisos; I have not heard it called so often, except by Chabolla himself. I don't know any Californian, except Chabolla, speak of that creek at all.

11th. How often have you passed by or in the neighborhood of that creek?

Ans. I have passed by it very often, as often as twice a week, for 6 or 7 years; having land, with stock on it, immediately east of it. I live in San José, and it is on the line of road to my ranch.

12th. How long have you known that creek to be called by the name of Sycamore creek?

264 Ans. In 1852 or '3, I talked of buying a piece of land on the Chabolla grant, on the north boundary, (as shown to me.) In talking to Mr. Antonio Chabolla about it, then was the time that he showed me where his north boundary was; then I heard him call this creek by the name of Alisos; since that time I have heard it called by the Americans Sycamore creek.

(Mr. Archer objects to so much of answer as relates to what Chabolla told witness.)

13th. At the time that Antonio Chabolla pointed out to you the northern boundary of his ranch, was he not living on the land, claiming it at the time?

Ans. He was living where he is living now.

14th. Is there any other creek near this rancho Pala called "Sycamore creek," or arroyo de los Alisos?

Ans. Not that I have ever heard of.

265 15th. Is your acquaintance with that portion of the country so intimate, that if there was any other creek called by that name generally, you would have known it?

(Objected to by Mr. Archer, on the ground that it is leading and seeks to elicit the opinion of the witness, and an inference of his as distinguished from a statement of facts.)

Ans. I think if there had been a creek there of any note by that name, I should have heard it.

16th. Are there any sycamore trees upon this creek that you call by that name?

Ans. There are.

17th. Are there many, or few? Are they large, or small?

Ans. I can't say how many. I would suppose from 40 to 50 or more, perhaps twice that; some are large and some are small.

18th. Have you ever been in the habit of visiting those
266 trees or their immediate locality for any purpose whatever; and if so, what?

Ans. On my ranch I have a pack of hounds, and hunting with them I have often seen wild cats in those same sycamore trees, and went down and killed them. There is a big thicket in the neighborhood of the head of that creek called Monte Sly.

19th. What is the size of those trees out of which you shot the wild cats?

Ans. There is one particular tree there in which I have seen 2 or 3 wild cats, which is very tall and about 18 inches through. There are some others larger, and some smaller.

20th. Are you acquainted with Nicholas Berreyesa, who lives and claims land north of the Pala rancho?

Ans. I know him; have seen him often.

21st. Do you know what is the condition of his health,
267 mentally and physically?

Ans. I do not know myself, but have heard that he is crazy.

22d. Have any of the sycamore trees on what you call Sycamore creek been cut down, or are there any indications to that effect?

Ans. I have never seen any.

23d. Look upon the map now shown you, marked Exhibit Quivvey No. 1, certified by the surveyor general as a copy of an original map or diseño filed in case No. 93, and purporting to be the diseño of the land named Yerba Buena or Socayre, granted to Antonio Chabolla, and say whether or not there is upon the ground any object which corresponds with what appears to be on the map three hills, the larger one being near to the arroyo de los Alisos?

Ans. About from four to five hundred yards west of Antonio Chabolla's house, and south of the creek that runs down by his house—Sycamore creek—there stands a round hill as indicated on
268 the map, and I think there are one or two little hills jutting out from it.

(Mr. Archer objects to the map as evidence in this case, and all evidence based upon it, for the reason that it is immaterial and inadmissible in this case; that it is not accompanied by any papers explanatory of it, which would be connected with it if it were authentic; and the witness does not profess to be acquainted with the map, or to recognize it as a map of anything.)

24th. Observe at the bottom of the map the six trees thereon represented, and state whether or not there are any such trees exist on the ground in or about that locality.

(Same objection as above.)

Ans. There are a great many big white-oak trees about that locality.

25th. State whether or not on a line from the most northern of these trees to where the arroyo de los Alisos comes out of
269 the mountain you have ever observed any marked trees.

Ans. There is a live-oak tree that used to stand near the mouth of this arroyo, where that arroyo runs out into the plains and scatters itself, with a cross on it, and, I think, on the north side—I mean the arroyo de los Alisos. Down in the plains, perhaps from 2 to 300 yards below the mouth of that arroyo, in amongst those oak trees, there stands, or used to stand, another tree with a cross on it.

26th. Do you know when the squatters invaded this ranch, and was it before or after the death of Charles White?

(Objected to by Mr. Archer, on the ground that it implies that squatters did invade the rancho.)

Ans. It was after the death of Charles White. He died in 1853. Within a year after Charles White's death, the whole plain of the rancho was squatted over; and since, they have squatted on the hills.

Cross-ex'd by Mr. Archer.

270 27th. Do you not know that before the death of Charles White, a large portion of what is claimed to be the Pala ranch, on the western or northwestern part thereof, was occupied and claimed by other persons than those professing to hold the Pala title?

Ans. I don't know that there were any squatters' houses on it previous to Charles White's death. Running a line from the stump of which I have spoken, direct to the Aguage creek, I think it would include some of the lots known as the 500-acre lots; upon some one of them there may have been a house, but I do not recollect this certainly.

28th. At what point on the Aguage would the line strike it, of which you spoke in your last answer?

Ans. I suppose it would strike it from a mile to a mile and a half down the creek.

29th. State what you know about any particular point on the Aguage being a corner of the Pala rancho.

271 Ans. I don't know anything about it.

30th. State what connection Charles White had, if any, with the survey of the 500-acre lot of the pueblo of San Josè.

Ans. I was not living in the county when it was first laid off.

31st. How far from the foot of the hills is the marked tree of which you spoke as being near the mouth of the arroyo?

Ans. There is one hill standing by the tree; then to the foot of the main chain of hills is from 400 to 600 yards.

32d. Can you say certainly whether the object at the southwest corner of the Pala rancho, as spoken of by you, was a stake or a stump?

Ans. I think it was a stump.

33d. How far is that stump from the trees of which you spoke in your examination in chief?

272 Ans. I would think it was 8 or 900 yards in pretty near a west course; it might be a little north of west.

34th. In running a line from the stump to the place where the arroyo of which you have spoken enters the valley, on which side thereof is the marked tree spoken of by you as being at the mouth of the arroyo, and how far from that line?

Ans. I think it would be a little south of the line, about 15 or 20 steps, but I can't say with certainty.

35th. Does not the arroyo, called by you Sycamore, turn to the south after leaving the hills?

Ans. I don't think it does.

36th. In what direction do you say it does run after leaving the hills?

Ans. I think it runs in a westerly direction.

37th. Are you acquainted with the arroyo on which Smith Peck lives?

273 Ans. I am acquainted with an arroyo on which a man named Peck lives. I don't know whether his name is Smith Peck or not.

38th. How far, and in what direction, is that arroyo from the one you call Sycamore?

Ans. I suppose in the neighborhood of a mile and a half, and is in a north course from the Arroyo.

39th. Have you ever travelled up or down the arroyo on which Mr. Peck lives?

Ans. I have.

40th. What is the name of it?

Ans. I don't know.

41st. Have you never heard it called by any name?

Ans. I don't think I ever have.

42d. Has not that arroyo sycamore trees on it?

274 Ans. The arroyo forks about 3 or 400 yards above Peck's house. The fork that heads northeast I think has a good many sycamore trees on it. I am not certain whether the other has or not; my impression is, it has.

43d. Is not sycamore the prevailing growth on the arroyo that runs by Peck's house?

Ans. I could not say.

Deposition closed.

his
PETER + QUIVVEY.
mark.

Subscribed and sworn to before me this 31st Jan'y, 1861.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed June 19, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 274.)

275 No. 93.

No. 93. Antonio Chabolla.
Yerba Buena.
Map or diseño.

Antonio Chabolla.
Yerba Buena.
Map or diseño.

Filed in office March 15th, 1853.

GEO. FISHER, *Sec'y.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican

territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two, inclusive, exhibit a true, full, and correct copy of the original map or diseño filed in case No.
276 93 on the docket of the board of land commissioners aforesaid, together with the endorsement on said map, as the same now appears on file in my office and in my charge and custody.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San
[SEAL.] Francisco, this 26th day of December, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed June 19, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of A. M. Pico on part of claimants.

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases, district court No. 233; land com.
v. } No. 638.
CHARLES WHITE. }

277 Be it remembered, that on this first day of February, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Antonio Maria Pico, a witness produced in behalf of claimants in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by , a sworn interpreter:

Present: Gen'l Wallace and J. J. Williams, for claimants; Mr. Archer for U. S.; U. S. att'y for U. S.

Questions in behalf of the claimants.

Question 1st. What is your name, age, residence, and occupation?

278 Ans. Antonio Maria Pico; 52 years; San José, Santa Clara county; lives upon his income.

2d. Do you know the tract of land called Pala, in Santa Clara county? If so, how long have you known it?

Ans. I do. In 1835 I gave juridical possession of that ranch, in the capacity of alcalde.

3d. To whom did you give that juridical possession?

Ans. Joaquin Higuera.

4th. How long before that time, if at all, had you known the rancho of Pala, and been acquainted with Joaquin Higuera?

Ans. I have known it for a long time before. I knew Higuera from my youth.

5th. How long, if at all, had Higuera lived upon or occupied the rancho of Pala, before the year 1835?

279 Ans. He occupied it about ten years before 1835, more or less.

6th. In what way did he occupy it; what did he do upon it?

Ans. He was cultivating the place, had his cattle upon it, and always occupied a respectable position as a working man. He had a house upon it, and corrals.

7th. State at what point you commenced to give juridical possession of which you have spoken.

(Objected to by Mr. Archer, on the ground that the act of judicial possession is in writing, as shown by the record in this case, parol evidence not being admissible in such case.

Question withdrawn for the present.)

8th. Please relate what occurred and what you did in giving the juridical possession of which you have spoken; and relate it in order of occurrence as far as you can.

280 (Objected to by Mr. Archer, upon the same ground as specified in the next preceding question.)

Ans. From the house of the old Higuera, the first measurement was made to the north to the rinconada del arroyo del Aguage; from there we ran the measurement west, down the arroyo to the Montecito Alto, where we left landmarks; then ran to the south to the rancho de Chabolla, Socayre. We then ran a line to the east, following the bank of the arroyo de los Alisos. I was there with the people.

9th. Please state what you mean by the word rincon, or rinconada del arroyo del Aguage; describe it.

Ans. The arroyo makes a bend at that point; that is what I mean by rinconada.

10th. From this point, the rinconada del arroyo del Aguage, you say that you ran in a westerly direction along the arroyo, until you reached the point where you placed a landmark; what was

281 that mark?

(Same objection as before, and now made to all questions of the same character hereafter.)

Ans. At the end of the measurement towards the west, I ordered a tree to be marked with an axe, as a landmark.

11th. From this tree, about how far was the Montecito Alto distant?

Ans. I think about 1,000 varas, more or less. I did not measure it.

12th. About how far would you say that tree was from the arroyo Aguage? Did it stand immediately upon its banks, or was it any

distance from it; and if so, about what distance from it would you say?

Ans. It was on the bank of the arroyo.

13th. From this tree, you state that you ran in a southerly direction to the rancho of Chabolla. What point did you reach as the termination of that line?

282 Ans. I reached a point where we marked an oak tree.

14th. State what objects or points you passed in running that line from the Aguage to the robla at Chabolla rancho?

Ans. I recollect passing some small lakes and waters running into the laguna "Socayre." We reached the edge of the robla, and there we marked an oak.

15th. From the robla, which you say was marked, at the south-western corner, to what place did you run next?

Ans. I followed the direction of the arroyo de los Alisos to the side of a hill, where we concluded the measurements, about half way up the hill-side.

16th. Do you know where the house of Antonio Chabolla is, and do you know the rancho or tract of land known as the rancho of Chabolla; and if so, how long have you known it?

283 Ans. I do know where the house of Antonio Chabolla is. I know the ranch of Chabolla, and have known it since 1855. Antonio Chabolla was also present at the time of giving the possession. He was a colindante of the Pala rancho.

17th. State whether or not the arroyo de los Alisos, of which you speak, is near to the house of Antonio Chabolla, or distant from it, and about how far distant.

Ans. About 50 varas, more or less; the distance is very short.

18th. How long have you known that arroyo, of which you speak as the arroyo de los Alisos? Did you first become acquainted with it in 1835, or did you know it anterior to that time; and if so, at what time did you first know it?

Ans. I knew it by that name at the time I gave possession.

19th. Have you ever known, in that part of the country, or anywhere upon or near the Pala rancho, any other arroyo as the

284 arroyo de los Alisos, except the one that you have spoken of as running within about 50 varas of the house of Antonio Chabolla?

Ans. I know of no other; this one only.

20th. In the record of the giving judicial possession of this rancho, it is stated thus: "Caminando por la orilla del arroyo de los Alisos hasta llegar al pie de la Cordillera de Lomas." State, if you please, whether the phrase or name arroyo de los Alisos, used in said record, refers to the arroyos of that name running near the house of Antonio Chabolla, as you have described it, or whether it refers to some other different arroyo than that one?

Ans. It is the same.

21st. Are you acquainted with the site of the house of Higuera, formerly standing upon that ranch, and inhabited by him; also, with the localities upon that ranch of Pala, used by Higuera as sowing land, rodeo grounds, and corrals?

285 Ans. I am acquainted with the whole.

22d. Were you upon the rancho of Pala a few days since in company with Mr. Healey, county surveyor of Santa Clara county; and if so, did you or did you not correctly, on that occasion, point out to him these various localities of which you have spoken in your last answer?

(Question withdrawn for the present.)

23d. State when you were last upon the Pala rancho.

Ans. About ten days since, more or less.

24th. Who was with you upon that ranch; upon what occasion?

Ans. Mr. Healey, the surveyor, accompanied me. Mr. Allen, Mr. Wallace, and Antonio Chabolla was there for a short time. We were outside of his house at the time.

25th. State what you did on that occasion, if anything, by way of pointing out to Mr. Healey the lines of juridical possession of
286 that ranch, that you gave in 1835.

(Objected to by Mr. Archer, on the ground that that is not the competent way to prove the locality of the objects referred to, and that the effect of this mode of examination is to convert the unsworn statements and actions of witness into evidence.)

Ans. I did point out such lines to him.

26th. State whether you pointed out to him, on the same occasion, the localities upon that ranch of Pala, which in 1835 was the dwelling-house, or the site of the dwelling-house, the corrals, sowing grounds, and rodes grounds, waters and streams, as they existed in 1835? And if yea, state whether you correctly pointed out the lines and objects and corners named in this and the preceding question.

(Objected to by Mr. Archer, upon the same grounds as spe-
287 cified in objections to the last question, and upon the further ground that it is leading; and that counsel objecting is informed that said Healey made a map, in which the objects referred to purports to lay down, which map has not yet been produced on this examination, nor has counsel, who objects, had an opportunity of inspecting it; and this mode of examination of witness will operate as a denial of the right of cross-examination of this witness in relation to such objects now being inquired about.)

(Counsel for claimants here offer to suspend this examination for the purpose of examining Mr. Healey and producing the map in evidence.)

(Counsel for government, in answer to this offer, states that he has no control over the course the claimants may take in the examination of their witnesses, or the order in which they may produce them; neither has he any arrangements to make in regard to such suspension, for the reason that the counsel for government will object to the introduction of said map as evidence in this case, and all testi-
288 mony based thereon, and will specify his objections when offered, if at all.)

(Counsel for claimants here offer to the counsel for the government the map referred to, which the claimants intend to offer in connection with the evidence of Mr. Healey, to be hereafter given, in order

that the counsel for the government may avail himself of it in the cross-examination of the witness now on the stand, and repeat the question last above written.)

(Here the map was handed to counsel for government.)

Ans. I pointed out to him all the localities—the points and courses of the survey. I cannot answer for all of the objects, as some of the trees may have fallen down.

27th. Do I understand you to say that as to the site of the old dwelling-house of Higuera, the corrals, sowing grounds, and rodes grounds, you pointed them out correctly, but as to some ob-
289 jects at the corners of the ranch or upon the lines, the disappearance of trees prevented you from finding the marks themselves?

Ans. I pointed out exactly the localities referred to, but many trees had disappeared; for which reason I said to the surveyor "these are the points;" but I could not swear to it on account of the disappearance of certain trees, which were landmarks formerly.

28th. State whether or not, in pointing out to the surveyor the lines and corners of this ranch of Pala, you did or did not pointed them out truly, according to your best knowledge and recollection of the same, as being the actual lines of the juridical possession given in 1835 of that ranch.

(Objected to upon grounds specified in objections to similar questions.)

Ans. I did, with exactness, because I had not forgotten.

29th. You have stated that in 1835 Antonio Chabolla, as
290 the owner of the rancho of Socayre, was a colindante of Higuera, as the owner of the rancho of Pala: what do you mean by colindante?

Ans. They are immediate neighbors, and there is a dividing line between them.

30th. In the record of juridical possession, as made by you in this case, in speaking of the line running in a southerly direction from the Aguage, it is stated that the line passes by the laguna del Socayre and the arroyita that arises from it: state what difference there is now between that laguna Socayre as it existed in 1835 and as it exists at the present time. Has it grown larger, or has it dried up partially, or what change has occurred?

Ans. The laguna is much smaller and drier than in 1835.

31st. Did you know Sebastian Peralta in his lifetime?

Ans. I did.

291 32nd. Is he living or dead?

Ans. He is dead.

33rd. Do you know Nicholas Berreyesa, senior?

Ans. I do.

34th. Who is colindante with the Pala ranch on the north of the Pala ranch?

Ans. Nicholas Berreyesa.

35th. State, if you please, whether Nicholas Berreyesa now is insane.

Ans. He is out of his mind.

39th. Do you know José Feliz; and if so, is he living or dead?

Ans. I know José Feliz, who lived in San José. He is now dead.

40th. Did you know Luis Chabolla, José Z. Fernandez, Francisco Soto, and Tomas Pacheco? If so, are they living or dead?

Ans. I know them all; they are all dead.

292 *Cross-ex'd by Mr. Archer.*

41st. State the precise day, if you can do it, on which you say you were on the Pala rancho with Healey and others.

Ans. I do not exactly recollect the day, or what day it was.

42nd. Have you a good memory?

Ans. I have a good memory with regard to things that interest me particularly. In this case I do not recollect the exact day, whether it was Monday, Tuesday, or Wednesday.

43rd. How far did you say it was from the tree which was marked on the bank of the Aguage to the montecito alto?

Ans. I cannot say exactly; but, more or less, it was about 1,000 varas.

44th. May it not have been 2,000 varas?

Ans. I cannot state exactly, because I have not measured it.

293 45th. Be kind enough to answer my question if you please.

Ans. I cannot answer the question exactly, because I did not measure the distance. If I had measured it I should know.

46th. Are you willing to swear that it was not 2,000 varas from the marked tree to the montecito alto?

Ans. I cannot swear positively. It would be necessary for me to measure the distance to know what it was.

47th. When you delivered judicial possession of this ranch you were acting under the sanction of an oath and of obligations of fidelity to your government, were you not?

Ans. I was.

48th. Were those obligations of as high a character as the obligation you are now under to tell the truth?

Ans. They were the same.

294 49th. Did you not make a record of the act of judicial possession at the time it was done?

Ans. I know that at the time records of all the proceedings were properly made. I do not know whether they are in existence now, because many of the archives of San José have been lost or destroyed.

50th. Was that record, in every part of it as made by you at that time, a true statement of the things that were then done?

Ans. It was.

51st. The facts stated in that record are more apt to be true, are they not, than matters merely resting in your late observation and present recollection?

Ans. There can be no doubt as to the record. I can swear that possession was given properly in the presence of witnesses.

52nd. Did you ever testify in the Pala case before this time?

295 Ans. I think that I have.

53rd. Do you know?

Ans. I think that I have; as I have given testimony with regard to many ranchos.

54th. Can you tell how many cases, in the matter of claims to ranchos, you have testified in?

(Counsel for claimant objects to this and such like questions as being totally irrelevant.)

Ans. I cannot recollect exactly; but with respect to the greater part of the ranchos in the neighborhood of San José and Monterey.

55th. Did you say that you marked the tree at the southwest corner at the time of the delivery of possession by you?

Ans. I ordered one to be marked. I did not mark it myself. I know it was marked.

56th. What kind of tree was that?

296 Ans. On the northwest point it was an enciño, I think; on the southwest I am satisfied it was a roble.

57th. Why is it that you are not as certain as to the tree at the northwest corner as you are at the southwest?

Ans. I am more sure with regard to the southwestern point, because in that neighborhood there were no enciños.

58th. Do you know that there are no enciños in that neighborhood from your late observation, or do you remember it as a fact known by you in 1835?

Ans. I know positively that in 1835 enciños were very scare there at that point.

59th. Would it have been possible for you, in 1835, to have mistaken an enciño for a roble?

Ans. I knew them both very well.

60th. Do you know where the Laguna Socayre is?

297 Ans. It is on the rancho de Pala; a very small portion of it is on the rancho of Chabolla; but the greater part of it is on the Pala rancho.

61st. Is not the place that was known by the name of Laguna Socayre altogether within the Chabolla rancho, and more than a mile from the Pala?

Ans. I cannot tell exactly now, because the lake has dried up very much, but I consider it to be on the rancho de Pala.

62nd. Did you, in 1835, understand well the location or boundaries of the Antonio Chabolla rancho?

Ans. I did.

63rd. Do you pretend to say that it had any well defined or well understood boundaries at that time?

Ans. I know that the arroyo de los Alisos was the dividing line between the Chabolla ranch and that of Higuera, as they had a

298 dispute upon the question and arranged it to that effect.

64th. Is that all the answer you have to give to my question?

Ans. I know that the boundaries were well known, because I gave

possession of the surrounding property. I know that Chabolla had the land between the ranchos, of which I gave possession.

65th. Did you deliver juridical possession to Chabolla?

Ans. I did not.

66th. When was that dispute, of which you spoke, between Chabolla and Higuera—before or after 1835?

Ans. It was in 1835. At that time I regulated matters between them, the arroyo de los Alisos being recognised as the dividing line, with their consent.

67th. Was that before or after you gave juridical possession to Higuera?

Ans. The arrangement was made by me at the time I gave
299 juridical possession to Higuera, and agreed to by the parties.

68th. Did you not that fact in the record of the juridical possession which you made at that time?

Ans. I made no record of the transaction—simply arranged the matter between the parties.

69th. Why did you not make a record of that fact?

Ans. I made no entry because it was in the country, and this was an agreement; and in such cases of agreement, with regard to Mexican lands, it was simply the custom to give possession on the spot; and such possession being given, was recognised as the only necessary judicial possession.

(Here the interpreter is requested to give the Spanish of the words that he has translated in the country. "En el campo."—Interpreter.)

70th. Do you mean to say that the dispute and settlement
300 thereof occurred on the day on which you delivered the judicial possession to Higuera?

Ans. It occurred on the same day. Everything was arranged on that day.

71st. Had you learned of that dispute before that day?

Ans. I knew nothing of the dispute before that day. It was of a very trifling nature.

72nd. Do you profess now to have a distinct recollection of the matters of a dispute, and a settlement thereof, as occurring at that time?

Ans. I recollect distinctly the circumstances.

73rd. Do you remember, too, that you made no note of it in your record of judicial possession?

Ans. I do not think that I made any entry of the same, because it was not necessary, as the act of giving possession was sufficient.

301 74th. Did you say that Nicolas Berreyesa was a colindante of the rancho Pala?

Ans. The arroyo de Aguage was the dividing line between Nicolas Berreyesa and the rancho Pala.

75th. Did you understand well the extent and boundaries of the Berreyesa rancho at that time, or have you ever done so since?

(Objected to by counsel for claimant as irrelevant, and because the boundaries of Berreyesa's rancho are not in issue in this case.)

Ans. I did not at that time, nor have I since known the extent or boundaries of the rancho of Berreyesa. I have seen a plan of the same made by Gulnac.

Deposition closed.

ANTONIO M'A PICO.

Subscribed and sworn to before me this 1st day of February, A. D. 1861.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed June 19, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of Antonio Chabolla, on part of claimants.

302 In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* CHARLES WHITE. } In land cases.—Dist. court, No. 233.—Land com. No. 638.

Be it remembered that on this first day of February, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Antonio Chabolla, a witness produced in behalf of claimants in the above entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by a sworn interpreter.

303 Present: Gen'l Wallace and J. J. Williams, for claimants; Mr. Archer, for the U. S.; and U. S. att'y, for U. S.

Questions in behalf of the claimants.

Question 1st. What is your name, age, residence, and occupation?

Ans. Antonio Chabolla; born in 1803; pueblo of San José; on his ranch; I mean to say on the land of the pueblo of San José, ranchero.

2nd. Do you mean to say that you live on land which is the property and belongs to the pueblo of San José, or that you live in your own ranch near the pueblo of San José?

Ans. I live on my own ranch, which belongs to me.

3rd. What is the name of that ranch?

Ans. Yerba Buena y Socayre.

4th. How long have you resided there?

Ans. I have lived there for a long time; do not recollect exactly how long.

5th. Have you raised a family there?

304 Ans. I have 10 children, born on the ranch, baptised in Santa Clara.

6th. About how old is your oldest child?

Ans. My eldest son died 15 days after his birth; my oldest daughter is 27 years of age.

7th. Is the present house where you live near the northern or southern boundary of your rancho?

Ans. It is on the eastern side.

8th. Is it near to, or far from the arroyo de los Alisos?

Ans. It is far from it.

9th. Supposing the arroyo to commence up in the hills, running down towards the west, and forming the northern boundary line of your ranch, how near is your present residence to that arroyo?

Ans. The distance from my house to the arroyo is about as
305 far as from here to a certain house (which the witness points out in the street, Jackson street;) I can't tell how many varas.

(It is admitted that said house is about 50 yards off.)

10th. Are you the same Antonio Chabolla who, as the owner of the rancho Yerba Buena y Socayre, are colindante with rancho Pala?

Ans. I am.

11th. How long have you known the arroyo de los Alisos of which you have spoken as running near your house?

Ans. I have known it for a long time; I do not recollect exactly how long; I have known it ever since I was on the ranch, and ever since I was a boy.

12th. State whether on or near the rancho Pala, or the rancho Yerba Buena y Socayre, there is any other arroyo which you ever known as the arroyo de los Alisos, except the one of which you have spoken?

Ans. There was no other.

306 13th. State whether or not the rancho of Pala joins on to the rancho Yerba Buena y Socarye?

Ans. It does.

14th. Do yon know where the southwestern corner of the Pala rancho is—I mean that corner near the house of Anastacio Chabolla?

(Objected to by Mr. Archer, on the ground that the mentioning of the house of Anastacio Chabolla is telling the witness where the corner is.)

Ans. I do.

15th. Please describe that corner, and how you know it?

Ans. There are two oak trees there—one fallen and one standing; and from them the boundary line runs to the northward.

16th. Commencing at these two oak trecs as the southwest corner, describe hew the lines runs easterly?

307 Ans. Commencing at the two oak trees above mentioned, running eastward, it runs directly to los alisos.

17th. What do you mean by los alisos.

Ans. Where are large trees called alisos; there are no other trees of that kind on the intervening space along the line.

18th. When you speak of the eastern line running to los alisos, do

you mean the arroyo de los Alisos, of which you have spoken, or something else.

(Objected to as leading.)

Ans. There are two distinct things: the arroyo de los Alisos, and the trees called los alisos, which form the limit.

18½. If those alisos of which you speak are situated upon any arroyo, what is the name of that arroyo.

(Objected to as leading and as suggetive to the witness to answer that the trees are on an arroyo, which he has not said.)

Ans. At those trees known as the alisos, commences an
308 arroyo which is known as the arroyo de los Alisos.

Cross-ex'd by Mr. Archer.

19th. You say that there are two oak trees at the southwestern boundary of the Pala rancho: how close together were they?

Ans. I cannot say exactly, but they were not far apart.

20th. More or less, say how far apart in varas.

Ans. I do not wish to swear falsely, and I cannot say exactly.

21st. Were there any other trees near those two.

Ans. Separated from them, beyond them, were a number of oak trees.

22nd. How far from them.

Ans. I do not know.

23rd. More or less, how far in varas.

309 Ans. I do not know.

24th. How far is it from those two oak trees to the sycamore trees of which you spoke.

Ans. I do not know.

25th. Can you give us some idea in varas, more or less.

Ans. I cannot.

26th. Where did you live in 1835?

Ans. I do not recollect; I have no recollection with regard to years and dates.

27th. When did you move to the place where you now live?

Ans. I don't know.

28th. Where did you live next before living at the place where you now are?

Ans. In the pueblo, in the house of my mother.

29th. Do you mean to say that you never lived at any other
310 place on the rancho Yerba Buena y Socayre than the place where you now live?

Ans. I have lived on three different parts of the ranch.

30th. Where on the rancho did you live first? Describe the place.

Ans. If you knew my ranch I could points out the place where I lived.

31st. Do you know a place called Silver creek?

Ans. I do not; I do not know new names.

32nd. Don't you know a place now called Silver creek?

Ans. I do not; I know all the places on my ranch, but do not know how they are all named.

33rd. Give us the names of the other arroyos upon your ranch besides aliso.

Ans. I cannot tell, because I have never given names to
311 any of them. I know this arroyo de los Alisos because there are tree there.

34th Do you know an arroyo about a mile north of the one you call Alisos ?

Ans. I know of none.

35th. Is it your determination not to answer me any question that I put to you ?

Ans. That is not my determination. I have come here to tell the truth, and am ready to answer about matters that I understand.

36th. What was the first name that your rancho had ?

Ans. El Socayre was the name of the ranch before I solicited it; afterwards it was called Yerba Buena y Socayre.

37th. Why and when was the name changed ?

Ans. I do not know when the name was changed. When I petitioned for it I solicited it under the name of Yerba Buena y Socayre.

312 38th. Whom did you solicit for it ?

Ans. Governor Figueroa.

39th. Did you solicit it from Governor Figueroa in the name of Socayre alone, or in the name of Yerba Buena Socayre?

Ans. It was called Socayre, Cuchilla Blanca, arroyo del Coyote.

40th. Repeat the question.

Ans. In my petition it was called Yerba Buena y Socayre.

41st. What particular part of that rancho, if any, was known by the name of Socayre before you petitioned for it ?

Ans. All of it.

42nd. Was there not some particular part of it specially known by that name ?

Ans. All the rancho was known by the name of Socayre and Yerba Buena.

313 43rd. Under what name did you petition Governor Alvarado for this ranch ?

(Objected to by counsel for claimants on the ground that it is irrelevant.)

Ans. The same name that it now bears, Yerba Buena y Socayre.

44th. Did you petition Alvarado first at all ?

(Same objection by claimants.)

Ans. I have already said that I have had the signature of Alvarado, Figueroa and Castro, and that those signatures would not have been given without my having presented a petition.

45th. What you have said is not an answer to my question. Please answer it, or say that you won't do so.

(Objected to by claimants, because the witness has just answered the question.)

Ans. I did petition for it to Alvarado.

314 46th. When ?

Ans. I do not recollect.

47th. Will you swear that it was done before the Americans took possession of California ?

(Objected to as irrelevant and improper, and as not involving any matter at issue in this case.)

(The counsel for U. S. insists upon the question, as legitimate, for the purpose of testing the recollection of the witness on important matters concerning himself, and likewise for the purpose of testing his credibility.)

Ans. I will swear to the fact on 200,000 crosses.

Re-direct resumed.

48th. Look on the map marked Exhibit Quivvey No. 1, now
315 shown you, and say if that map presents a true representation of the rancho Yerba Buena y Socayre?

Ans. I know nothing about it; I can't read; I wish to Heaven I could.

Deposition closed.

his
ANTONIO × CHABOLLA.
mark.

Subscribed and sworn to before me this 1st day of February, A. D. 1861.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed June 19th, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of Charles T. Healy on part of claimants.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
CHARLES WHITE. } In land cases, district court No. 233; land com. No. 638.

Be it remembered, that on the second day of February, A. D. 1861, at the city of San Francisco, in the district aforesaid,
316 before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Charles T. Healy, a witness produced in behalf of claimants in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Gen'l Wallace and J. J. Williams, for claimant; Mr. Archer and U. S. att'y, for U. S.

Questions in behalf of claimants.

Question 1st. What is your name, age, residence and occupation?

Ans. Charles T. Healy; 27 years; San José; surveyor.

317 2d. State if you went upon the Pala ranch a few days ago in company with Antonio Maria Pico, and for what purpose you went.

Ans. I did; and for the purpose of making a survey of the rancho Pala according to the lines of judicial possession, under instructions from the U. S. surveyor general, dated January 22d, 1861, based upon an order of the U. S. dist. court.

3d. State what you did on that occasion.

(Objected to by Mr. Archer, on the ground, 1st, that said order of the dist. court was made irregularly, and not upon notice, as required by the rules of said court in such case; 2d, that the court had no jurisdiction to make the order, nor the surveyor general to give the instructions; 3d, that what was done by witness on that occasion was without any consent or notice as to the contestants in this case, and that his acts, sayings and doings on that occasion are entirely immaterial in this case.)

318 Ans. I examined the corners pointed out to me by Mr. Pico, as the corners of the original judicial possession. He also pointed out to me the Montecito Alto, the ruins of the old house of Higuera, the corral and rodeo grounds, and the arroyo de los Alisos, and the location of the laguna Socayre. Antonio Chabolla also pointed out the corners upon the boundary of his rancho Yerba Buena y Socayre, and also the arroyo de los Alisos and the laguna Socayre. Mr. Pico pointed out the sowing lands of Higuera, upon the arroyo del Aguage, and also sowing lands west of the ruins of the old house of Higuera, and at the lower corner of the rancho, the southwestern corner.

(Objected to by Mr. Archer, upon the grounds specified in objections to question, and also upon the ground that it is only detailing hearsay and acts of other persons, immaterial in this case.)

319 4th. Look upon the map now offered in evidence, marked Exhibit Healy No. 2, and state who made it; and if you say that you made it, state under what circumstances and for what purposes you did so.

(Mr. Archer objects to the introduction of the map in evidence for any other purpose, or with any other view, than as a diagram, made by the witness on his own observation, and objects to all testimony of said map, or in relation thereto, based upon the acts or statements of other persons. He also objects to all testimony of a similar character hereafter to be given upon the same ground.)

Ans. I made it under the instructions referred to in my answer to question No. 2.

5th. Look at the point upon map, marked Exhibit Healy No. 2, marked A, representing the northeastern corner; state what that is, and who pointed it out to you, if anybody.

(It is agreed that the objections heretofore made shall be con-

320 sidered as repeated to each question and answer of this witness.)

Ans. It was pointed out to me by Mr. Pico as the place called the

Rincon, where the arroyo Aguage comes out of the mountains, and as the northeastern corner of juridical possession.

The statement now made by me as to what Mr. Pico pointed out, and what he said to me in relation to the boundaries, lines, corners and objects upon the rancho Pala, and the statements that I shall hereafter make in the course of this deposition, are statements made by him to me, and objects pointed out by him to me, upon the occasion of our late visit to the rancho Pala, of which Pico spoke in his deposition of yesterday.

6th. Will you please answer the same question as the last foregoing question in relation to the points marked respectively on said maps B, C and D?

Ans. The point B represents the northwestern corner of the
321 judicial possession, and was pointed out to me by Mr. Pico. The points C and D represent, respectively, the southwestern and southeastern corners of the judicial possession, and were pointed out to me by Mr. Pico and Antonio Chabolla.

7th. State who pointed out to you the place on said map noted as the ruins of the old house of José Higuera.

Ans. Mr. Pico.

8th. Will you please describe what you saw there at that place which would indicate that the statement of Mr. Pico, on that occasion, was correct or otherwise?

Ans. I saw ridges of earth, which are apparently the walls of adobe buildings, which had been washed down by the rains, and also an old millstone.

9th. State at what point on said map is represented the place that Pico, on that occasion, pointed out to you, the site of the old corral of José Higuera, deceased.

322 Ans. The point immediately south of the ruins of the house, through which the words "José Higuera" are written, and which is marked "corral."

10th. State what the words "sowing lands," where they occur on said map, at points westerly of the old ruins, and also in the southwestern portion of said map, indicate.

Ans. Upon reflection, I am not positive that either of those places were pointed out to me on the occasion of my visit, already referred to, but that they were located from information derived from Mr. Pico and Antonio Chabolla before my map was completed, and subsequently to my visit. The place marked sowing lands of Higuera upon the Aguage was particularly pointed out to me upon the ground, by Mr. Pico, and as being one of the limits to which the lines of judicial possession extended at the time of giving said possession.

11th. State what the words rodeo ground, as written upon
323 said map, represent; what information did you have, and how did you obtain it, by which you were enabled to fix that point?

Ans. The exact direction of the rodeo ground, or place where they parted out their cattle, from the ruins of the Higuera house, was

pointed out to me by Mr. Pico upon the ground. He subsequently explained to me rather more definitely its distance therefrom.

12th. State all you know by observation and by information derived from Pico and Chabolla, upon the ranch, upon the occasion referred to, as to the place marked "Waters of laguna Socayre at the time of judicial possession."

Ans. I was told by Mr. Pico and Mr. Chabolla, on the occasion of the visit, that the waters of the laguna Socayre, in former times, extended over the place on which those words are written. There are traces of water in that vicinity, and at points water now exists, as marked upon the map, and there are depressions
324 where water may have existed to a large extent; but I did not discover any well defined beds of a laguna, though my personal examination was not thorough. I think the land in that vicinity is generally cultivated at the present time. A more particular examination with a levelling instrument would doubtless have enabled me to answer more definitely.

13th. By what means were you enabled to represent upon this map the objects called, respectively, El Arroyo de los Alisos and the representation of the house with the name of Antonio Chabolla written under it, near to the southeastern corner of the rancho Pala?

Ans. My acquaintance with the locality enabled me to locate them correctly upon the map, and I was told by Pico and Chabolla that that arroyo was the arroyo de los Alisos. I know that Antonio Chabolla resided at the house referred to.

14th. State, if you please, whether or not there are, upon
325 that arroyo called Los Alisos, on this map, any sycamore trees; and if so, state something in relation to their size, their number, and the prominence they have, if any, when viewed from the plain of the rancho Pala.

Ans. There are sycamores upon the arroyo extending from a point about ¼ of a mile above the house of Antonio Chabolla, nearly to its source high up in the mountains. Some of them I should judge to be a foot to a foot and a half in diameter; some of them have been cut down, but I think there are 100 standing. There are sycamores upon the high branch of the arroyo de los Alisos which can be seen from the plain in the vicinity of the southwest corner, marked C, of the rancho. Standing at the point C, I have myself seen the white bodies of three or four, standing high up in the mountains upon the arroyo de los Alisos. The distance is about three miles, I should judge.

15th. State, if you please, from your personal observation
326 of the plain in the region of the letter C on this map, and your observation of the arroyo de los Alisos, and the country generally around both these points, whether a person could, who had ordinarily good eyesight, and knew a sycamore tree when he saw it, pass over the plain, up to the arroyo de los Alisos, and go two-thirds of the way up the arroyo, and not see anywhere upon that arroyo sycamore trees.

Ans. From the plain in the vicinity of the letter C, I think any

one, whose attention had been directed to them, or who was looking for them, could have seen them; but I know it is impossible for any one to have gone two-thirds of the way up the said arroyo without having seen them, because he must have passed some of them, supposing that he commenced at the point where the arroyo comes out of the hills.

16th. Supposing that a person were upon the arroyo de los Alisos, at any place near the house of Antonio Chabolla, must or must
327 not such person necessarily, if he takes any trouble to observe, or looks in the direction of the arroyo, see sycamore trees upon the arroyo or about it?

Ans. I cannot say that they can be seen from the house itself, but they are visible from several points in the immediate vicinity.

17th. State if a person can be anywhere near, around about, and in the region of the house of Antonio Chabolla, and look up the arroyo to such point of it as he may most conveniently see, and see sycamore trees upon it and about it.

(Objection by counsel for gov't to this and the three preceding questions, as leading.)

Ans. I believe that a person whose attention was directed to them could not help but observe them. From the top of the small hills a few hundred yards to the north of Chabolla's house, they can be seen very plainly.

18th. Supposing that there were a considerable growth of
328 sycamore on the arroyo de los Alisos, near the summit, and another considerable growth in the arroyo further down towards the plains, which would most likely attract the notice of a person riding along the foot-hills, judging from the conformation of the country there—those upon the summit, or those growing lower down upon the plains?

Ans. Those upon the summit; because, those growing lower down are hidden from view by a spur of the hills.

19th. Did you hear the testimony of John B. Henning, taken in this case, about the 27 of last December, before Mr. Commissioner John B. Williams?

Ans. I did not.

20th. State if the various objects and points laid down on this map are correctly or incorrectly delineated, according to the information received, and personal observation made by you, as above stated by you.

329 They are correctly located.

21st. What do the pencil marks within the exterior lines of that ranch indicate?

Ans. The final survey of the rancho de Pala, by John Wallace, is indicated by the corners marked 1, 2, 3, 4 and 5.

22d. Do you know where the line of the United States survey running along the northern side of the rancho Yerba Buena y Socayre, and determining the northern boundary of that ranch, is, and what relation, if any, that northern line of the rancho Yerba Buena y Socayre, thus fixed, bears to the southern line of the rancho de Pala, as fixed

in the survey of the rancho of Pala, made by Mr. Wallace, of which you have just spoken?

Ans. I do know where the northern boundary of the rancho Yerba Buena y Socayre is, as patented by the government of the United States. The southern boundary line of the Pala rancho, according to the survey of Mr. Wallace, is identical with that line.

330 The post at the southwest corner of the rancho de Pala is marked with the initials of the ranchos of Yerba Buena and Pala, and recognized by me as the monument placed by the United States deputy surveyor.

Cross ex'd by counsel for the United States.

23d. In making the map, which is made a part of this deposition, did you, or not, pretend or endeavor to represent all of the objects within and about the exterior limits thereon?

Ans. I endeavored to represent all the objects referred to in my instructions.

24th. Do you represent on this map all the objects pointed out to you, within the exterior limits, by Pico?

Ans. I think I do.

25th. Did, or not, Mr. Pico point out to you the place from

331 which he commenced the measurement, in delivering juridical possession?

Ans. He told me that the measurement was commenced at a point a short distance to the northward of the ruins of the old house, and continued to the rincon of the Aguage.

26th. What corner marks did you find, if any, at or near the north-western corner of this map marked B?

Ans. Mr Pico was unable to show me any particular tree, as the one marked at the time he gave judicial possession, but he was positive as to the immediate vicinity, and gave as one of his reasons that there was a very high tree there, higher than any other, which could be seen from the opposite side of the rancho; and also a kind of opening in the tree near it, which, as he expressed it, made a good signal to run towards. There are stumps of 3 or 4 trees there. one of which, he said, might have been the one marked. I adopted the tall tree referred to, as the corner of the survey made by me.

332 (Answer objected to by counsel for the U. S., as to that portion which relates to what Pico said and did.)

27th. Did you find any mark on any tree standing at or near that corner?

Ans. I found none that I could distinguish as boundary marks, except the marks apparently made by Mr. Wallace, in his first survey of rancho de Pala.

28th. What kind of tree is the one which you say you adopted?

Ans. A live oak.

29th. What kind of trees were those, the stumps of which you have spoken of as being in that neighborhood?

Ans. There is a sycamore, a live oak, and a kind of ash or maple.

30th. What is the distance from the tree you say you adopted to the tree having an old mark thereon, standing near the arroyo
333 del Aguage, of which you spoke in a previous examination in this case?

Ans. About ¾ of a mile.

31st. In running the western line of the surveys represented by this map, are the grounds marked "showing lands of Higuera," near the northwestern corner thereof, included or excluded?

Ans. They are excluded.

32d. What is the distance of those sowing lands from the ruins, laid down on this map?

Ans. About 2½ miles.

33d. Did you find, at or near the point marked C on this map, any marked trees? I do not ask you what Mr. Pico or Mr. Chabolla said, but what observation you made yourself.

Ans. I did not. I ran to the stump of a tree which has been cut down.

34th. Of what kind of tree is that the stump?

334 Ans. White oak.

35th. Would you have discovered anything like an old laguna, or suggestive of the idea of there being one there in running that line, if somebody had not told you about it?

Ans. I should, as the line passes water at two points, as shown upon the map.

36th. Do you call every place at which you see water standing in the rainy season, in this country, a laguna?

Ans. I do not.

37th. Have you not always heretofore understood that the laguna de Socayre is located within the Chabolla rancho, and south of any point of the Pala rancho?

(Objected to by counsel for claimants, because tending to introduce more hearsay evidence.)

335 Ans. I have always understood it so until this last survey made by me, of Pala.

38th. Have you not yourself seen and examined the place that you heretofore thought was the laguna del Socayre?

Ans. I have made surveys in the vicinity of it.

39th. Please describe that place, and give its location with reference to the northern boundary line of the Yerba Buena rancho, and tell us how you came to know it by that name?

Ans. It is shown upon the map by the crescent-shape mark, marked "Water," and is within the lines of the Yerba Buena rancho, and I think I first heard it called laguna Socayre by one of my assistants on said ranch. I cannot recollect having heard any native Californians call it laguna Socayre, though I never took pains to inquire.

(So much of the answer as is hearsay is objected to by counsel for claimants as incompetent.)

336 40th. Have you ever heard that place called by any other name, or known it by any other name, than laguna del Socayre?

Ans. I have not.

41st. Did you ever hear any other place called, or have you ever known any other place by that name anywhere in that section of country until the time of making the survey, of which this (Exhibit Healy No. 2) is a plat?

Ans. I have not.

42d. Is the northern line of the Chabolla rancho straight? If it is not, tell where and how much it varies from a straight line.

Ans. It is not. It runs something in the manner shown by the figures 5, 4, 6, and 7, the lines 6 and 7 being now added by me in pencil.

43d. Is not the course of that line changed where the offset is made at 6 and 4?

337 Ans. It is.

44th. Does the pencil mark made by you on which the figures 6 and 7 are placed represent the correct direction or course of said northern line of Chabolla rancho at the western end thereof?

Ans. It does, as nearly as I can lay it down without instruments.

45th. Did you upon the ground, in any examination made by you, find anything whatsoever to indicate old sowing lands at any of the points on this map, marked by you with those words?

Ans. I did not.

46th. Did you find anything upon the ground to indicate that the place marked "corral" had ever been used for such purpose?

Ans. I did not.

47th. Your only warrant for marking localities with those words, then, was that other persons told you, was it not?

338 Ans. It was; I did it upon the representations of Pico and Chabolla.

48th. Please indicate on this map, if you can, the northwestern and southwestern corners of a measurement made by you for Henning and others in the year 1858.

Ans. They are shown upon the map at the points marked 8 and 9 in pencil.

49th. Please indicate on this map the lines of that survey running easterly from point 9 as marked on this map.

Ans. It is represented by a dotted line from the figures 9 to 10, in pencil.

50th. Are the ruins which you saw, and have spoken of as being pointed out to you as the ruins of the old Higuera house, north or south of that line?

Ans. North.

339 51st. The survey of the Pala rancho which this map is intended to represent was made since you were last examined in this case, was it not?

Ans. It was.

52d. State whether the arroyo which runs near the residence of Smith Peck, and which in your previous examination you spoke of as having sycamore trees on it, is laid down on the map of the approved survey at all, or if there is any pretence of its being laid down; is it so done truly or untruly?

Ans. I believe that it was intended to be laid down upon said map of the final survey, but it is represented a little too far to the southward; I cannot state exactly how much. as I did not make a resurvey of the survey of Wallace, as I could not find the post at the figure 1.

53d. From all the lights before you, state how far the location of that arroyo on the map is from its true location, according to your opinion and calculation.

340

Ans. It may be 20 to 30 chains.

54th. Is the representation of that arroyo on the approved map of the survey, if it is represented there at all, correctly or incorrectly laid down with reference to size?

Ans. I am unable to say, not having the map before me.

[The map of final survey seems to have been misplaced, and though sought for, cannot now be found.—Comm'r.]

55th. How far up the mountain is the corner marked 5 on this map, if it is on the mountain at all?

Ans. It is at the foot of the hills.

56th. How far is it, about, from the foot of the hills at that place to the summit easterly?

341

Ans. Nearly 2 miles.

57th. State as nearly as you can how much land within the exterior limits of the survey, lately made by you, is embraced within what are known as the 500-acre lots of the pueblo of San José.

Ans. Perhaps between 2,000 or 3,000 acres.

(The foregoing question and answer is objected to by counsel for claimants, because it is attempted thereby to establish that the property called 500-acre lots is the property of the pueblo of San José; such evidence is incompetent for that purpose; otherwise said question and answer is objected to as irrelevant.)

Redirect resumed.

58th. How far is the plaza, in the town of San José, from the nearest point of the western line of the official survey?

342

Ans. About 3 miles; I can't state more particularly without reference to notice of survey, which I have made.

59th. On the map of your survey made for Henning and other squatters, do you now think, since your recent examination of this rancho, you correctly located the arroyo running by Smith Peck's house?

Ans. I think it is located a little too far to the north, but am satisfied that there was no error of any importance in making said survey.

60th. In examining the line of the official survey along the bank of the arroyo del Aguage, did you observe the post planted by Mr. Wallace as indicating the northwest corner of the official survey?

(Objected to by U. S. as being new matter, and as not explanatory of anything drawn out on cross-examination.)

343

Ans. I did not find the post at the place indicated by the notes of said survey; I did find a post, which I supposed to be the one made by Mr. Wallace, at a point about 140 rods above, upon the arroyo.

61st. Had that post been removed from its true position? And if so, state, if you know, by whom it was removed.

Ans. It evidently had been removed, but I don't know by whom.

62d. Was the effect of that removal to prolong, apparently, or shorten the time on the Aguage?

Ans. To shorten it.

63d. Assuming the line 5, 1, and 2, on the map recently made by you, marked Exhibit Healy No. 2, to be the eastern line of your survey, what number of acres is contained in it?

Ans. Nearly 5,000 acres.

Cross-ex'd.

64th. How much land is embraced between the dotted line on the eastern side of your survey, (Exhibit Healy No. 2,) and the
344 eastern line of the Wallace survey?

Ans. About 1,000 acres.

65th. How far does the eastern line of your survey run from the summit of the range of hills?

Ans. About 2 miles.

Deposition closed.

CHA'S T. HEALY.

Subscribed and sworn to before me this 2d February, 1861.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed June 19, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows Exhibit Healy No. 2, being plat of survey fronting page 203.)

Affidavit of José Feliz.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 12th day of October, A. D. 1858, before me, a notary public in and for said county, personally came José Feliz, who, having been by me duly sworn, upon his oath says: I am aged sixty-three years; I was born in California, and have resided within the
345 jurisdiction of the pueblo de San José about forty years. I know the rancho de Pala, lying east of the pueblo de San José, which formerly belonged to the deceased, Joaquin Higuera. I have known that rancho about twenty-six years. I know the boundaries of that rancho. It is bounded on the north by the arroyo del Aguage; on the east by the summit of the mountains; on the south by a line running from the arroyo de los Alisos, to a tree near the house of Anastacio Chabolla, said tree being about two hundred yards distant from said house; and on the west by a line running from said tree to the arroyo del Aguage. The arroyo de los Alisos,

I speak of is a very short distance to the north of the house in which Antonio Chabolla now resides, and is the only arroyo in that vicinity known by that name; this arroyo I speak of runs about one hundred yards north of the house of Antonio Chabolla. The house of the deceased, Joaquin Higuera, stood very near the middle of said rancho. I have been for many years familiar with said land, and with the arroyos in that vicinity, and know the names of all
346 of them; and if there had been any arroyo there called Los Alisos I should have known it.

his
JOSÉ × FELIZ.
mark.

Subscribed and sworn to before me this 12th day of October, A. D. 1858.

[SEAL.] SHERMAN O. HOUGHTON,
Notary Public.

Endorsed: Filed June 19, 1861.

W. H. CHEVERS, *Clerk.*

This paper was offered in evidence the 1st day of Feb'ry, 1861, by claim'ts, and objected to by counsel for government on the ground that it is a mere ex parte affidavit, and that there was no opportunity to cross-examine affiant, and that it is entirely inadmissible according to all rules of evidence.

U. S.
vs.
CHARLES WHITE. } No. 233.

347 *Affidavit of Sebastian Peralta.*

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 27th day of September, A. D., 1858, before me, a notary public in and for said county, personally came Sebastian Peralta, who, having been by me duly sworn, upon his oath says: My name is Sebastian Peralta; am aged sixty years. I have lived all my life in the vicinity of the pueblo de San José. I know the tract of land lying east of the said town of San José, which was granted to the deceased, José Joaquin Higuera, and called the rancho de Pala. I have known said tract of land more than thirty years. I know the boundaries of said tract of land. It is bounded on the north by the arroyo del Aguage; on the east by the summit of the hills; on the south by a line running from the arroyo de los Alisos, on the hills near the house of Don Antonio Chabolla, down to an oak tree in the roblar, said tree being about two or three hundred varas from the house in which Anastacio Chabolla formerly resided; and on the west by a line
348 running from the point last named to the Montecito Alto (high thicket,) and being bounded on the south by the rancho of Antonio Chabolla. The arroyo de los Alisos, which I have spoken of

as one of the limits of said rancho de Pala, is a small arroyo a short distance from the present place of residence of Antonio Chabolla, and there is no other arroyo in the neighborhood of said rancho which was ever to my knowledge known by that name. I am well acquainted with the names of all the arroyos in that vicinity, and used to be frequently upon said rancho, and am certain that there was no other arroyo or stream in that vicinity than the one I have described which was known by the name of arroyo de los Alisos.

his
SEBASTIAN × PERALTA.
mark.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 27th day of September, A. D. 1858, before me, a notary public in and for said county, personally came Sebastian Pe-
349 ralta, who, having been by me duly sworn, upon his oath said that the facts set forth in the foregoing affidavit are true, he having first subscribed the same and it having been read to him in the Spanish language.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

SHERMAN O. HOUGHTON,
Notary Public.

This paper was offered in evidence the 1st day of February by claim'ts, and objected to by counsel for government on the ground that it is a mere *ex parte* affidavit, and that there was no opportunity to cross examine affiant, and that it is entirely inadmissible according to all rules of evidence.—(U. S. *vs.* Charles White, No. 233.)

Endorsed: Filed June 19, 1861.

W. H CHEVERS, *Clerk.*

350 *Stipulation for taking testimony in Santa Clara co.*

In the district court of the United States, northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'r'x. } L. C., No. 638.—D. C., No. 233.

It is hereby stipulated and agreed that the witnesses to be examined in this case may be examined in the county of Santa Clara before any officer authorized by laws of this State to administer oaths and certify depositions, and that the depositions taken under this stipulation may be read in evidence in this cause, as if the same were regularly taken before the proper commissioner of this court. If witnesses are examined by claimant, then notice of time and place to

be served on L. Archer, esq., assisting the government in this case: if taken on behalf of government, like notice to be served on Wm. T. Wallace, esq., counsel for claimant.

CALHOUN BENHAM,
U. S. Att'y.
L. ARCHER,
Assistant Attorney.

351 J. J. WILLIAMS and W. T. WALLACE,
Att'ys for Claimants.

Deposition of Henry Bee.

In the district court of the United States, northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x. } L C., No. 638.—D. C., No. 333.

Be it remembered that at the city of San José, county of Santa Clara, on the eighth day of February, A. D. 1861, before John B. Hewson, county clerk of said county of Santa Clara, duly authorized by the laws of the State of California to administer oaths and certify depositions, personally appeared Lawrence Archer, esq., and William T. Wallace, esq., and exhibited and filed the annexed and foregoing stipulation in writing, signed by them respectively, and thereupon proceeded to examine witnesses in said cause, both on the part of the claimant and on the part of the United States, and
352 which examination of witnesses and the depositions given by them respectively, and the several objections thereto taken by the respective counsel aforesaid, and the several exhibits filed, are correctly set forth hereinafter—that is to say:

Henry Bee, a witness on the part of the claimant herein, being introduced, sworn and examined, testified as follows, viz:

Questioned by attorney for claimant.

Question 1st. What is your name, age, and place of residence?

Answer. Henry Bee; aged 51 years; and I reside in San José.

Ques. 2d. How long have you resided in San José, and within the present limits of Santa Clara county?

Answer. About twenty-seven or eight years; about twenty-five years in this town.

Ques. 3d. Do you know the tract of land lying easterly of the town of San José, and called "Rancho de Pala?" And if you say you do, state how long you have known it, and how well.

353 Answer, Yes, sir, I know the tract of land called the rancho de Pala. I have known it for the last twenty-five years; in former times my father-in-law sowed wheat there, and I have been there at work, and was well acquainted with the deceased, Joaquin Higuera, and his family.

Ques. 4th. State if you know, anywhere on or about that rancho,

an arroyo called arroyo de los Alisos. And if you say you do, state whereabouts on said rancho it is; state if there is any one's house situated near it; if so, whose, and about what distance from it, in your judgment, and what direction from it, is the house; and what relation has the arroyo de los Alisos, if you know, to the boundary line between the said "Rancho Pala" and any other neighboring or adjoining rancho.

(Counsel for the U. S. objects to said question upon the ground that a portion of the question is based upon the statement that said arroyo is on said rancho, and that it is leading and suggestive of the answer desired.)

354 Answer. I do know of an arroyo de los Alisos on said rancho; it is on the southern boundary; the only house that I know of near said arroyo is the house of Joaquin Higuera, son of the deceased, Joaquin Higuera. I cannot tell how far the house of Joaquin Higuera is from the arroyo Alisos; it has been some time since I crossed said arroyo. Going from Joaquin Higuera's house to Antonio Chaboya's house, and from Antonio Chaboya's house to Joaquin Higuera's house, there is a pathway leading from said Higuera's house to said Chaboya's house, crossing the creek, or arroyo de los Alisos. Joaquin Higuera's house is north of the arroyo de Alisos; the arroyo is the southern boundary line of the "Rancho Pala," running east and west; it is also the northern boundary line of the rancho of Antonio Chaboya. I know the name of the Chaboya rancho, but cannot recall it at this time.

Question 5th. State, if you please, if you know where the present residence of Antonio Chaboya is, to which you seem to have
355 alluded in the foregoing answer. And if you do know where it is, state where it is, how far it is, in your judgment, from the arroyo de los Alisos, of which you have spoken, and on which side of the arroyo it is.

Answer. I do know where the present residence of Antonio Chabolla is. It is on the south side of the arroyo de los Alisos, and to the best of my recollection is about 500 yards from the nearest point of said arroyo to the said house of Chaboya; it has been some time since I was there, and my estimate is not very accurate.

Question 6th. State if you know the southwestern corner of the rancho de "Pala," and if you know the old house of Anastacio Chaboya, or the place where it stood; and if you know the laguna Socayre. And if so, state whether these points are close to or distant from each other.

(Counsel for the U. S. objects to this question upon the ground that the question is unnecessarily long and is suggestive of the answer desired.)

Answer. I do know the southwestern corner of the rancho
356 Pala, and the old house of Anastacio Chabolla. I have seen them both, and I know the laguna Socayre; they are close to each other, all on the southwestern corner of the rancho; the laguna is north of the corner.

Quest. 7th. State what general direction from the laguna Socayré and the house of Anastacio Chaboya and the southwestern corner

of the Pala rancho, which you say are not far from each other, is the arroyo de los Alisos—what direction?

Answer. It is easterly from these objects.

Quest. 8th. State what you know, if anything, in relation to any cultivation upon the rancho de Pala, near the southwestern corner of which you have spoken, and state by whom, and about what time such cultivation, if any, was done.

Answer. I have seen cultivation there. It was done by several persons; they used to go over there by liberty of Joaquin Higuera, deceased, and cultivate wheat and barley on the south side of
357 the boundary line of the Pala rancho. I have seen Anastacio and Antonio Chaboya cultivate the land. I first saw this cultivation on the Pala rancho about 23 years ago; and the last time I saw cultivation there was about twenty years ago. I don't remember any cultivation after that; I went to the Redwoods to work about that time.

Quest. 9th. State what you know, if anything, about a tract of land called Yerba Buena y Socayre, and state whether that rancho, if you know, is the same as the rancho that you have called the Antonio Chaboya rancho, and the name of which you said you were unable to recall a little while ago?

Answer. I don't know of any tract of land called by that name.

Quest. 10th. State if you know lot number seventy-four, of the five-hundred-acre lots, so called?

Ans. Yes, sir. Mr. Lyman and Mr. Douglas showed me the lot; it was granted to me by the town of San José.

Quest. 11th. State if you ever disposed of that lot (74.)
358 And if you say you did, what reason, if any, did you have for disposing of it, and to whom?

(Counsel for the U. S. objects to this question upon the ground that the testimonies sought to be elicited is irrelevant, immaterial and inadmissible.)

(The counsel for the claimant state that they intend to produce the original, if it can be had; otherwise, a certified copy of the instrument of sale made by witness in the sale to which he is questioned about.)

Answer. Yes, I disposed of it, knowing it to be on the rancho Pala, first to Dr. Leavenworth, and then to Mr. Dimmick, then alcalde of San José. I first sold it to Dr. Leavenworth, and afterwards sold it to Mr. Dimmick.

Quest. 12th. You seem to state in your foregoing answer that you actually sold and conveyed that lot 74 to two distinct persons at two distinct periods of time. Please state fully how that happened.

(Counsel for U. S. objects to this question upon the ground
359 that if the lot was sold and conveyed, it must have been in writing, and the writing should be produced, as being the best evidence of its contents.)

Answer. To the best of my knowledge. I only conveyed it to one, Mr. Dimmick. I don't think I gave a deed to Dr. Leavenworth. Dr. Leavenworth paid me a part of the purchase-money, and gave me his note for the balance, and I held the lot as security. I sued him for

the balance, $59, here in San José, before Dr. Dimmick, alcalde. It was decided that Dr. Leavenworth was to pay me in sixty days; if not, I was to sell the lot. He never paid me, and I sold the lot to Mr. Dimmick; this suit occurred, and the decision was made in the year 1849.

(Counsel for the U. S. objects to this answer, so far as it purports to tell the contents of writings or the proceedings in the lawsuit, for the reason parole testimony is inadmissible.)

Quest. 13th. Please state in what way and by what means
360 you ever got any claim on the said lot 74, so called; and whether you knew where lot 74 was until it was pointed out to you, as you have before stated; and why they pointed it out to you as lot 74, and state generally all you know about the early history of lot No. 74; of which you have spoken above.

(Counsel for the U. S. objects to this question as immaterial and incompetent for any purpose in this case.)

Answer. I being an old settler in the town of San José, and a Mexican citizen at the same time, I was allowed the same privilege as was allowed other citizens. I was allowed to draw for a 500-acre lot. The day the drawing was, I was in the quicksilver mines; it was in the year 1847, I believe. Mr. Charles White, who was alcalde at the time, drew the lot for me; the next day after the drawing I returned to town and received a deed for the lot No. 74. I received
the deed from Chas. White, who offered at the time to buy it
361 from me. I did not sell it to him; I wanted it myself. I first wanted to know where it lay, and employed Mr. Lyman, a surveyor, to go and show me where it was, and to locate it for me. Mr. Douglas and myself went with him; and as soon as I found out where it was located, I saw that it was on the rancho de Pala, and then I wanted to sell it.

Quest. 14th. State if you know where on the said rancho de Pala José Joaquin Higuera was accustomed to rodeo his cattle; if any, where and when.

Answer. I do know. It was to the eastward of his house, and back of it, and between two hills, that is where I have seen him rodeo his cattle. I have been there with him at the time of the rodeo, helping him brand calves.

Quest. 15th. State which was nearest to the arroyo de los Alisos, the rodeo ground or the house in which Higuera lived?

Answer. There was not much difference. There was a
362 creek between the house and the rodeo ground; the house and corral was on the south side and the rodeo on the north side of the creek; that is, the rodeo that I saw.

Quest. 16th. State what acts of occupation and possession, if any, in addition to those which you have already stated, you have known old José Joaquin Higuera, now deceased, to exercise and do upon that portion of the rancho Pala lying between the old house of the deceased, Joaquin Higuera, and the Antonio Chaboya rancho?

Answer. He cultivated the land; had his cattle and horses running over and grazing on it.

Quest. 17th. State, if you please, whether or not during all the

time you say that you have known the Pala rancho you ever knew any other arroyo about that rancho to be called the arroyo de los Alisor except the one that you have already described as such, and running near (500 yards, as you estimate the distance) the house, the present residence of Antonio Chaboya.

363 Answer. No, sir; I never did hear of any other arroyo being called the arroyo de los Alisos, except that one which I have described as running near the house, the present residence of Antonio Chaboya.

Quest. 18th. State, if you please, whether about the year 1844 you had upon the rancho called Cañada de Pala any stock of any kind; and state whether you were in the habit, and if so, how often were you in the habit of passing and repassing from the city of San José (then called the Pueblo) to the rancho of Cañada Pala, and where did the route of your travel lay in relation to that arroyo de los Alisos of which you have spoken?

Answer. I did have cattle on the rancho Cañada de Pala, in the year 1844. I sometimes went from San José to the Cañada de Pala rancho twice a day going and coming, for about three months, when I was pasturing my cattle there; I don't mean every day, but nearly every day, say three or four times a week. I always passed

364 by the old house of José Joaquin Higuera, on the south side of the house. I passed up the creek near to the house. The said arroyo de los Alisos lay to the south of the creek up which I passed. The rancho of Pala lies easterly of the city of San José, and the rancho Cañada de Pala, upon which I had my stock, lies next easterly and adjoining the Pala rancho. The route I travelled was the road that was always travelled to the Cañada Pala rancho; it was the road I took my cattle to the Cañada Pala.

By agreement of the counsel, the further hearing of the testimony herein is continued until to-morrow, at 11 o'clock a. m.

FRIDAY, *February 8th*, 1861.

The examination of Henry Bee is resumed; present, as before, L. Archer for the U. S., and W. T. Wallace for claimant.

Cross-examined by counsel for the U. S.

Question 1st. When were you on the land you call the

365 "Pala rancho" the last time? Give the year and day as near as you can.

Answer. About two years ago.

Quest. 2d. Were you on the occasion of that visit to that rancho at the house of Antonio Chaboya?

Answer. No, sir.

Quest. 3d. On what part of the rancho were you, and for what purpose did you go?

Answer. I was at the house of Joaquin Higuera. I went to work there to put an addition to the stable or carriage-house.

Quest. 4th. When were you at the house of Antonio Chaboya the last time?

Answer. To the best of my recollection, about seven or eight years ago.

Quest. 5th. Describe the locality of the house of Joaquin Higuera.

Answer. It is on the rancho Pala, on a hill by a spring of water. There are two springs near the house. His dwelling-house
366 is on the north spring from the arroyo de los Alisos, or from Antonio Chaboya's house.

Quest. 6th. How far and in what direction is the house of Joaquin Higuera from the house of Antonio Chaboya?

Answer. It is about half a mile, a little more or less. Antonio Chaboya's house is southerly from the house of Joaquin Higuera; Chaboya's house is more easterly than Higuera's house. I am speaking of Joaquin Higuera, the son of the old man now deceased, and of the present residence of Antonio Chaboya.

Quest. 7th. How many times have you been at what is now the residence of Antonio Chaboya?

Answer. About four times.

Quest. 8th. When were you there, each time?

Answer. Twice when I was living in the Cañada Pala, about the year 1844 or 1845, once from Anastacio Chaboya's, and once from Joaquin Higuera's; these last visits were about seven or eight
367 years ago, and about the same time.

Quest. 9th. At what time did Antonio Chaboya move to the place where he now lives?

Answer. I don't recollect. In 1844 or 1845 the walls of the house were up. The last time I was there he was living there.

Quest. 10th. Did you see Anastacio Chaboya the day you say you went from his house to Antonio Chaboya's, seven or eight years ago?

Answer. I don't believe I did. The last time I was there two of his sons were married, Fernando and Facundo.

Quest. 11th. Have you seen Anastacio Chaboya at any time within the last ten years?

Answer. I have.

Quest. 12th. When and where did you see him last?

Answer. I saw him in this town when he was taken prisoner, and shortly afterwards at his house.

368 Quest 13th. How long before or after that time was it that you say you went from his house to Antonio Chaboya's house?

Answer. I believe it was before, but I am not certain.

Quest. 14th. Describe, if you please, the place you call the southwestern corner of the Pala rancho?

Answer. Ten or eleven years ago I saw a marked tree, and have been told since that that was the southwestern corner of the Pala rancho.

(Counsel for the U. S. objects to the latter part of this answer, upon the ground that it is not responsive to the question, and is hearsay.)

Quest. 15th. What kind of tree was that?

Ans. It was a live-oak tree. There were three or four trees around there.

Quest. 16th. Is that tree still standing, or was it the last time that you was there?

369 Answer. I believe it was the last time I was there. The last time I saw it, to my recollection, was about ten years ago, in the year 1850 or 1851.

Quest. 17th. Have you ever, since the year 1850 or 1851, seen the ground where you say the southwestern corner is?

Answer. I have been on it seven or eight years ago, or near it, at the house of Anastacio Chaboya.

Quest. 18th. Did you see the tree of which you have spoken on the occasion of your being at Anastacio Chaboya's?

Answer. I might, but I do not recollect.

Quest. 19th. How far do you say that live-oak tree was from the laguna del Socayre, and in what direction therefrom?

Answer. I do not know how far it was from the laguna; it was south from it.

Quest. 20th. Can you not tell us how far it was from the laguna, more or less?

370 Answer. I cannot. I did not notice particularly.

Quest. 21st. You did not know that place as the southwestern corner of the Pala rancho until after 1850 or 1851, did you?

Answer. No, sir.

Quest. 22d. Do you state positively that the tree of which you have spoken was south of the laguna del Socayre?

Answer. Yes, sir, it lays in that direction south.

Quest. 23d. Was that laguna there the last time you were on the Pala rancho?

Answer. The place was there, but it was a dry day.

Quest. 24th. Was there any other laguna near there?

Answer. In the rainy season there were several ponds around there, southerly—deep gulches, water running over the prairie.

371 Quest. 25th. In what direction does the arroyo which you call "Alisos" run, from the point of it nearest Antonio Chaboya's house?

Answer. From the nearest point to Antonio Chaboya's house, the arroyo runs, as near as I can recollect, a westerly direction.

Quest. 26th. Are you satisfied that you know anything at all about its course?

Answer. I never took particular notice, but my opinion is that it runs as I say.

Quest. 27th. Into what, or where, did the waters of the arroyo you call "Alisos" run? State, if you know.

Answer. I don't know.

Quest. 28th. How far and in what direction is the ground that you say your father-in-law cultivated from the live-oak tree of which you have spoken?

Answer. It was a northerly direction, but I don't know how far.

372 Quest. 29th. Can you not say how far, more or less?

Answer. No, sir.

Quest. 30th. Was it as much as a mile?

Answer. I cannot say.

Quest. 31st. Was it as much as two miles?

Answer. I cannot say.

Quest. 32d. At the time your father-in-law cultivated the land, about 23 years ago, you did not know anything of the live-oak tree, did you?

Answer. No, sir.

Quest. 33d. What is the name of your father-in-law?

Answer. Anastacio Moreno.

Quest. 34th. Did he not then live in the pueblo?

Answer. No, sir; he lived with his family on the farm.

373 Quest. 35th. Did he not have a house in the pueblo de San José?

Answer. In the winter time he lived in the pueblo, but he had no house of his own in the pueblo at that time.

Quest. 36th. Did not various citizens of the town cultivate land on what you now call the Pala rancho?

Answer. Yes, sir.

Quest. 37th. You stated that your father-in-law cultivated under permission from José Joaquin Higuera. Do you not mean to say that it was done under permission of the pueblo authorities?

Answer. No, sir; it was under the authority of José Joaquin Higuera.

Quest. 38th. Did you hear that permission given?

Answer. No, sir, but I have every reason to believe it was given, I heard so much talk about it in the family.

Quest. 39th. Do you state that all the citizens or residents in the pueblo did their cultivation on what you now call the Pala

374 rancho, under the authority or permission of José Joaquin Higuera?

Answer. I can only answer for one family, that of my father-in-law, and the rest I believe is the same; I understood so by hearsay.

Quest. 40th. About how many persons of the pueblo of San José cultivated land on what you now call the Pala rancho?

Answer. I cannot say.

Quest. 41st. Do you not know that some others besides your father-in-law did cultivate there?

Answer. Yes, sir; but I cannot call them by name, except José Joaquin Higuera and my father-in-law. I have seen the people there, but do not recollect who they were.

Quest. 42d. Do you not know that they were people of the pueblo?

Answer. Yes, sir.

375 Quest. 43d. Did José Joaquin Higuera cultivate at one place only, or at more places than one?

Answer. I cannot say.

Quest. 44th. Can you give us the locality of any one place that you ever knew to be cultivated by José Joaquin Higuera?

Answer. No, sir. I only went there in the harvest time. I have seen the fences, but do not know who they belonged to.

Quest. 45th. What is the name of the arroyo which you say you passed in going to the Cañada de Pala?

Answer. I do not know as I ever heard any name for it. I know of no name.

Quest. 46th. Is not that arroyo as large or larger than the one you call Alisos?

Answer. It might be wider in parts, and deeper up at the upper, the eastern end.

Quest. 47th. Is there any fork in that arroyo; and if so, where is the arroyo that ran by the old house of José Joaquin Higuera,
376 deceased?

Answer. Not that I recollect of. In passing up the creek you cross it and leave it to the right hand.

Quest. 48th. Is there any fork of the arroyo you call Alisos; and if so, where?

Answer. I cannot say.

Quest. 49th. How far was the place you called the rodeo ground of José Joaquin Higuera, deceased, from the house in which he lived at the time you saw them marking cattle?

Answer. I am a bad hand at measuring or estimating distance.

Quest. 50th. Is not your memory bad as to places and distances?

Answer. Yes, sir; and in those times I did not take any notice of places or distances. I could show, if I was there on the ground, better than I could describe.

377 Quest. 51st. Did José Joaquin Higuera have a mill on the Pala rancho?

Answer. Yes, sir; a house mill; a California mill.

Quest. 52d. Where did the mill stand, with reference to the house in which he lived?

Answer. Southeasterly from and back of his house, between the house and corral.

Quest. 53d. How far from the house was the mill?

Answer. Close to the house. I don't recollect how far; it was many years ago.

Quest. 54th. Do you mean to say that José Joaquin Higuera did not mark his cattle in his corral, but at some other place?

Answer. I never saw him mark any in his corral.

Quest. 58th. Was there any enclosure at the place you say you saw the cattle marked?

378 Answer. None, sir, except the creek on the south side, and the hill on the eastern side, and a small hill on the western side.

Quest. 56th. How many cattle were there on that occasion when you saw them marked?

Answer. I cannot say as to the amount of cattle. There were three owners present.

Quest. 57th. How many in all, more or less?

Answer. I cannot give an idea how many there was now.

Quest. 58th. How many were marked, more or less, on that occasion?

Answer. I do not recollect. I did not keep tally.

Quest. 59th. Can you give no idea, more or less?

Answer. No, sir.

Quest. 60th. Why is it that you can remember so distinctly the place, and can remember nothing as to number?

379 Answer. I was assisting as a vaquero, and had been all over the place, a number of times—at least fifty times.

Quest. 61st. Had you been over that place anything like fifty times when you say you saw the cattle marked?

Answer. No, sir. When I say fifty times, I mean since I have known the place.

Quest. 62d. Was there not, northerly of the house of José Joaquin Higuera, deceased, a fence or enclosure, or lot, solar, when you were on the rancho Pala first, or at some other time?

Answer. Yes, sir, but more westerly from the house across the creek.

Quest. 63d. How far from the house of José Joaquin Higuera?

Answer. It was not very far.

Quest. 64th. Describe this place, and tell us what it was, which you say was westerly and not very far from the house.

380 Answer. It was a house where José Bernal, deceased, lived with his family. His wife was a daughter of José Joaquin Higuera.

Quest. 65th. Tell us how far, more or less, that house of Bernal's was from the house of José Joaquin Higuera.

Answer. I cannot tell; it was not far; if I was on the ground I could show you.

Quest. 66th. Do you not know that it was several hundred yards northerly from the house of José Joaquin Higuera?

(The counsel for the claimant objects to this question, as being new matter and leading.)

Answer. The place where I mean was on the northern side of the creek, westerly of the house of José Joaquin Higuera; the distance I do not recollect.

Quest. 67th. Don't you know that some distance northerly

381 from the house of José Joaquin Higuera, deceased, there was some house, or enclosure, or cultivated ground, facing towards the north?

(To this question the counsel for the claimant objects, because the same is directed to the investigation of matters not alluded to in the direct examination, and because the question is leading in form and suggestive of the answer desired.)

(Counsel for the U. S. states that he asks the question in a leading form, because the witness is the witness of the claimant, and not of the government. He insists upon the question for the reason that the inquiry made is material in the case. The inquiry is made to test the recollection of the witness and to disprove his answer, if he should answer incorrectly.)

Answer. Yes, sir, as late as the year 1850. I saw José Mesa and his brothers cultivating north of the house of José Joaquin Higuera.

I saw the enclosure then, but before that time I do not recollect of seeing any.

382 Quest. 68th. At what particular place was it that your father-in-law cultivated and raised the grain which you say you helped to thrash out?

Answer. South of the house of Joaquin Higuera, towards the laguna Socayre.

Quest. 69th. How far from the house?

Answer. I cannot say.

Quest. 70th. When was the last time you saw the creek or arroyo that ran by the house of José Joaquin Higuera, deceased?

Answer. About two years ago I saw it.

Quest. 71st. Was the creek still running along by where the house then stood?

Answer. I expect the creek was still there. It runs out from the hills by the house into the prairie.

383 Quest. 72d. Did you say that the house of José Joaquin Higuera, deceased, was on the north side of that creek?

Answer. I did.

Quest. 73d. Do you swear to it now?

Answer. Yes, sir, without the creek is altered.

Quest. 74th. How deep was the channel of that creek at the point thereon nearest the house of Higuera, deceased, twenty-three or twenty-five years ago, when you say you were there?

Answer. About four or five feet deep; not very wide by the house.

Quest. 75th. Was water running by the house, in said channel, in the dry season?

Answer. Very little; it was miry.

Quest. 76th. Can you tell about how many varas from that creek was the house of Higuera, deceased?

Answer. I don't recollect; it was not far; I did not take notice.

384 Quest. 77th. Describe to us the locality of the 500-acre lot 74 of which you spoke in your examination in chief.

Answer. It was north of Higuera's house, and south of the arroyo Aguage; nearer the arroyo than the house.

Examination in chief resumed.

Question 1st. Is Anastacio Chaboya living, or dead?

Answer. I believe him to be dead.

Quest. 2d. What do you know, if anything, in relation to a grove of trees joining or near to the tree of which you have spoken as being the southwest corner of the rancho Pala?

(Counsel for the U. S. objects to this question as being new matter, and not explanatory of anything drawn out on the cross-examination.)

Answer. I know there was several straggling large oak trees about the house of Anastacio Chaboya, north of the house, but I do

385 not recollect anything about a grove of trees.

Quest. 3d. In relation to the laguna Socayre, of which you have spoken as being near the southwestern corner of the rancho

Pala, state whether or not it has dried up considerably within the last few years.

Answer. Yes, sir, I believe it has.

Quest. 4th. State if ever you saw on the rancho Pala any thrashing floor belonging to the deceased José Joaquin Higuera, and state in what direction it was from his house.

Answer. Yes, sir, I did see one; it was southwest from his house.

HENRY BEE.

Subscribed and sworn to before me this eighth day of February, A. D. 1861.

JOHN B. HEWSON,
County Clerk of Santa Clara County.

By agreement of the counsel for the parties, the hearing of further testimony herein is adjourned until to-morrow, at 2 o'clock p. m.

Dep. of José Noriega on part of claimants.

386 SATURDAY, *February 9th*, 1861.

Parties met pursuant to adjournment—present, L. Archer for the U. S., and Wm. T. Wallace for the claimant, and John B. Hewson, county clerk—when José Noriega, a witness on the part of the claimant, being produced, sworn, and examined through Mr. Ballou, a sworn interpreter, testifies as follows:

Questioned by the counsel for the claimant.

Question 1st. What is your name, age, and place of residence?

Answer. José Noriega is my name; I am sixty years old; and I reside in San José de Guadalupe, which is the present city of San José.

Quest. 2d. How long have you resided in San José?

Answer. Twenty-six years.

Quest. 3d. State what acquaintance, if any, you have with the tract of land lying easterly from this town of San José called
387 "Pala," and of which José Joaquin Higuera was the owner.

Answer. I know that that land has titles given to Higuera, and judicial possession given to him by the alcalde of this pueblo.

Quest. 4th. State, if you know, what rancho, if any, lies south of, and adjoining to the Pala rancho.

(Counsel for the U. S. objects to this question, upon the ground that the question assumes that some rancho adjoins the "Pala," and upon the further ground that the form of the question virtually suggests to the witness to say that some rancho does actually adjoin the Pala rancho on the south.)

Answer. I know that adjoining the rancho de Pala is the rancho de Chaboya, and on the other side is bounded by an arroyo. I never was there with a compass, to know whether it was bounded on the south by Chabolla or not. I only know those two boundaries.

388 Quest. 5th. Do you know where the present residence of Antonio Chaboya is?

Answer. Yes, I know where Antonio Chaboya is living at present.

Quest. 6th. Do you know an arroyo anywhere upon or about the said rancho Pala, which is called the arroyo de los Alisos?

Answer. Yes, I do.

Quest. 7th. State where said arroyo is, in relation to the present residence of Antonio Chaboya.

Answer. It is the line between Chaboya and Higuera; it is north of Chaboya's house. Chaboya's house is south of the arroyo, and the line of the Pala is on the north.

Quest. 8th. You have stated that the house of Chaboya is situated south of said arroyo de los Alisos; now about what distance do you estimate that it is from said arroyo to said house of Antonio Chaboya?

Answer. I cannot say certain whether it is on the north or
389 south, but it is on the opposite side of the line of the Higuera rancho; I cannot say certain what distance said house of Chaboya is from the said arroyo, because I have never paid much attention to it.

Quest. 9th. In asking you to estimate the distance from that arroyo to the house of Antonio Chaboya, we do not expect you, nor do we ask you, to give an accurate statement of what the distance is, in fact, but only to give us your opinion or estimate of what the distance is. Will you please give us your estimate of the distance, more or less?

Answer. I cannot mention any distance, because I have never paid any attention to it.

Quest. 10th. Do you know where the house of José Joaquin Higuera, now deceased, was situated upon the rancho of Pala?

Answer. I do.

Quest. 11th. Is that arroyo de los Alisos, of which you have spoken, situated nearer to the old house of Higuera, or near to the house
390 of Antonio Chaboya?

Answer. I cannot exactly say the distance to the house of Chaboya, but the house of Higuera is about half a league, more or less, from the arroyo.

Quest. 12th. Are the houses of Higuera and Chaboya, of which you have spoken, on the same side of the arroyo de los Alisos, or are they upon different sides of that arroyo?

Answer. One is on the rancho of Higuera, and the other is on the rancho of Chaboya; one is on one side of the arroyo, and the other is on the other side of the arroyo.

Quest. 13th. How long have you known the arroyo de los Alisos, of which you have spoken, to be called by that name?

Answer. Ever since I have known the arroyo, more than twenty-five years. I know it well, because I have been there a great many times at rodeos of the cattle of the rancho.

391 Quest. 14th. During this period of time of which you have

spoken, have you ever known any other arroyo in that region to be called arroyo de los Alisos?

Answer. I have never heard of any other arroyo about there called by the name of arroyo de los Alisos.

Ques. 15th. During that period of time have you ever known of any arroyo on or near the Pala rancho to be called the arroyo de los Alisos, except that one that you have spoken of as separating the houses of Higuera and Chaboya?

Answer. No; I never knew of any other.

Ques. 16th. What do you know, if anything, in relation to José Joaquin Higuera, now deceased, having in his lifetime resided on the rancho of Pala?

Answer. When I first knew José Joaquin Higuera, he was living on the rancho de Pala, in the old house which is now burned; he was sowing there; he had a crop of wheat.

392 Ques. 17th. Where did José Joaquin Higuera reside at the time of his death?

Answer. He was living on the rancho Pala when he died, but his death may have occurred here in the puebla.

Ques. 18th. What cultivation, if any, did José Joaquin Higuera have upon that part of the Pala rancho which lies between his old house and the lands of Chaboya, of which you have spoken?

(Counsel for the U. S. objects to this question, upon the ground, first, that it is leading; second, it is suggestive to the witness to state when the cultivation was; third, it would be much more easy and shorter to ask the witness where Higuera cultivated, without implying by the form of a question that cultivation was done between the old house and the lands of Chaboya.)

(Counsel for the claimant insists that the question is not leading, nor is it suggestive except so far as it must necessarily be in calling the attention of the witness to the matter about which his answer

393 is desired, and that the witness has shown in his previous answers his ignorance of the points of the compass in relation to the boundary line between the ranchos of Higuera and Chaboya, but is not ignorant, as appears from his foregoing answers, of the relative situation which the house of Higuera has to the line of the Chaboya rancho; and the counsel for the claimant further insists that it is proper to call the attention of the witness as to what was done by Higuera, if anything, in the way of occupation or cultivation of the southern portion of the Pala rancho, as claimed by the claimant in this case, because the counsel understands that the main contest in this case is in relation to the southern portion of that rancho as claimed by the claimant.)

Answer. He had horses and cattle, and crops.

Cross-examined by counsel for U. S.

Ques. 1st. What cultivation did José Joaquin Higuera do

394 on any part of the rancho de Pala, between the old house and the arroyo Agnage, which you say lays on the other side of the Pala rancho from the Chaboya rancho?

Answer. The whole of the rancho was occupied with his horses and cattle, and with his crops.

Ques. 2d. How many times have you been at the present place of residence of Antonio Chaboya.

Answer. Where he is living now, I may have been there two or three times in my lifetime; but when he was living further down the valley, I have been there several times; where he is living now is the place where I have been the least.

Ques. 3d. When were you there, at the place where Chaboya now lives, the last time? how long ago, I mean.

Answer. I do not know; it has been at least four or five years.

Ques. 4th. When did Chaboya move to that place where he now lives.

Answer. I do not know.

395 Quest. 5th. State, if you know, how the arroyo you call "Alisos" happened to be called by that name.

Answer. Because there were trees on it called Alisos; when I knew it, it was called Alisos.

Quest. 6th. Were there not more alisos trees on the arroyo which comes from the mountains nearly opposite the old house of Higuera, the waters of which ran near the said old house?

Answer. Where the alisos were was on the arroyo which divide the two ranchos, the ranchos of Higuera and Chaboya; on the other arroyo there was no alisos; there was one aliso near the house.

Quest. 7th. Do you mean to state that the arroyo which passed near the house of the deceased, Higuera, had on or near it only one aliso tree?

Answer. I mean to say that that arroyo might have had more than one aliso on it; but the only arroyo that came down into the

396 plain which had alisos in it was the arroyo which divides the two ranchos.

Quest. 8th. Do you mean to say that the arroyo you call "Los Alisos" is the only arroyo in that vicinity that came down into the plain?

Answer. The only arroyo which comes down straight, and which divides the two ranchos, is the arroyo which I know as the arroyo "Los Alisos."

Quest. 9th. Do you not know that another arroyo comes down from the mountains, the water of which ran near the old house of Higuera, deceased?

Answer. Yes; I know that there is an arroyo which comes down there, but that is nearly in the centre of the rancho.

Quest. 10th. Did you ever travel up or down that arroyo which you say is near the middle of the rancho?

397 Answer. Yes, a great many times.

Quest. 11th. Do you not know that many alisos trees grew and were standing on that arroyo which you have last spoken of?

Answer. There may have been a few; if there were any, they were very few. I did not pay so much attention to this arroyo as I did to the arroyo de los Alisos, which I knew to be the line.

Quest. 12th. What was the name, if it had any, of the arroyo which you say was near the middle of the rancho?

Answer. I do not remember any name that it had except that of arroyo.

Quest. 13th. Did any person in those early times, when you first knew the Pala rancho, live near the arroyo you call "Alisos?"

Answer. No person lived near or on the arroyo until about 1849 or 1850.

Quest. 14th. Do you think that you understood well the boundaries of the Chaboya rancho of which you have spoken?

Answer. I know the lines of Higuera rancho, and the lines
398 of the Chaboya rancho, and will go with you to-morrow, if you wish, and show them to you before you finish taking my testimony.

Quest. 15th. If you cannot tell how far the present house of Antonio Chaboya is from the arroyo which you call the boundary line, where you say you have been lately, why is it that you can remember so distinctly matters that occurred more than twenty years ago?

Answer. I remember things that happened when I first began to walk, but might forget what occurred the other day. I did not come here to tell stories; I came to tell the truth.

(At this point of the examination the witness manifested some impatience, stating, through the interpreter, that he thought that the character and style of the cross-examination called his veracity in question for the purpose of hurting his feelings; thereupon the claimant's counsel requested the counsel for the government
399 that the cross-examination was not intended to wound his feelings, only to elicit the truth in the usual way in which the truth is ascertained by cross-examination, which the counsel for the government declined to do.

Counsel for the government now states that he believed at the time, and believes now, that there was no necessity for any explanation or apology, deeming that all his questions were perfectly fair and legitimate, and that the impatience manifested by the witness was altogether uncalled for.

The above is written down by the officer taking this deposition, at the particular request of the counsel for the claimant.)

Quest. 16th. Were you present when the alcalde of the pueblo of San José gave judicial possession of the rancho of Pala to José Joaquin Higuera, deceased?

Answer. I was not present. I saw them when they started from here. I was not present when he gave him judicial possession.

Quest. 17th. Whom do you mean when you say "you saw
400 them when they started from here?"

Answer. The Justice Fernando, who was the surveyor, Tomas Pacheco, Augustin Alviso. I don't know if there were any more afterwards; those are the ones I saw start from here.

Quest. 18th. In what year did you come to the pueblo de San José?

Answer. In the year 1835. I came to California in 1834.

Quest. 19th. How long had you been here when you saw the persons named go away from here, as you have stated?

Answer. I think it was in the year 1858 or '9. I am not certain; it might have been as late as 1840.

Quest. 20th. What time in the year 1835 did you arrive in the pueblo de San José?

Answer. It was in the winter, but I do not remember the month. I think it was in the beginning of the year 1835.

401 Quest. 21st. Had you ever been on the rancho Pala before you saw the judge start away from here, as you have said?

Answer. Yes, sir, I had been there before, because I had business with Joaquin Higuera. He used to buy things of me here, and I used to go out there to collect the money.

Quest. 22d. Were you selling goods here at that time?

Answer. Yes, sir.

Quest. 23d. How long had you been here before you commenced selling goods?

(To this question the counsel for the claimant objects, because the question is an immaterial one, and because the answer to the question cannot, in the slightest degree, illustrate the true boundaries of the Pala rancho, and because it is an unnecessary enquiry into the business of the witness, an answer to which would not throw any additional light in the judgment of the counsel for the claimant upon the matter in controversy here.

402 Counsel for the government insists upon the question, and states that he asks this question, and all such questions, in order to test the recollection of the witness, and to ascertain, if he can, whether the witness's recollection as to some matters which he has stated in his examination in chief may not be at fault.

The counsel for the claimant now adds the further objection that this portion of the cross-examination is directed for the purpose of testing the credibility of the witness in relation to a new fact stated by the witness, for the first time, on his cross-examination, and not on his examination in chief, to wit: the fact that the witness was present here in San José when the judge and his assistants went to give judicial possession to Higuera of the rancho of Pala.)

Answer. As soon as I came here, because I brought the goods with me to sell.

Examination in chief resumed.

403 Quest. 1st. State of what country you are a native.

Answer. Spain.

JOSÉ NORIEGA.

Subscribed and sworn to before me this 9th day of February, A. D. 1861.

JNO. B. HEWSON,
County Clerk.

By agreement of the parties, the further hearing of testimony herein is adjourned until Tuesday, the 12th inst., at 11 o'clock a. m.

Dep. of Wm. C. Wilson, on part of claimants.

Tuesday, February 12th, A. D. 1861.—The parties met pursuant to adjournment. Present: L. Archer, counsel for the U. S.; W. T. Wallace, counsel for the claimant, and the officer taking these depositions. When William C. Wilson, a witness on the part of the claimant, being produced, sworn, and examined, testified as follows:

Questioned by the claimant's counsel.

404 Question 1st. What is your name, age, and place of residence?

Answer. My name is W. C. Wilson; my age is forty-two years; my residence, San José, Santa Clara county.

Quest. 2d. How long have you resided in the county of Santa Clara?

Answer. I came here in 1849, and commenced making my residence here in 1850.

Quest. 3d. Do you know where is the present residence of Antonio Chaboya?

Answer. I do.

Quest. 4th. How long have you known Antonio Chaboya to have lived at his present residence?

Answer. Ever since June or July, 1851.

Quest. 5th. Do you know an arroyo anywhere near the residence of Antonio Chaboya called the arroyo los Alisos? And if you say you do, state the general direction in which that arroyo runs; where
405 is it with reference to the house of Antonio Chaboya, of which you have spoken; in what direction is it from that house; and about how far distant is it, in your judgment, from that house of Antonio Chaboya.

Answer. I know of an arroyo near that residence called by the Spaniards los Alisos; the arroyo runs about west, I think; I do not know exactly the point of the compass about there. It is north of the house of Antonio Chaboya, and I should say it was from forty to sixty yards from the house of Antonio Chaboya. I cannot say with certainty the exact distance.

Quest. 6th. State if you ever had any business which made it necessary for you to pass along often in the region of that arroyo? And if so, what was that business, and when did it commence, and how often, if at all, have you been in the habit of passing and repassing that place?

Answer. I had such business. I owned a part in a rancho which lay east of Antonio Chaboya's house and that arroyo which you
406 speak of, and had stock on it, and attended to them over there, but resided in San José except about six months, when I lived on that rancho. I commenced passing that place in 1853, from which time until August, 1859, I passed it, on an average, of about once a month; it might be more, but I do not think it was less.

Quest. 7th. State if, during all that period of time of which you have spoken, you ever heard any other arroyo in that region of country anywhere called by the name of arroyo los Alisos, except the

one which you have described as being north of and near to the house of Antonio Chaboya ?

Answer. I never heard of any other arroyo on this side (western side) of the hills called by the name of arroyo los Alisos, except the one described.

Cross-examined by counsel for U. S.

Quest. 1st. Do you know the meaning of the words los Alisos; if so, what is it ?

407 Answer. I think I do. I think it means sycamore trees.

Quest. 2d. Have you not heard another arroyo in that vicinity called Sycamore creek or Sycamore arroyo ?

(Counsel for claimant objects to this question as being irrelevant.)

Answer. Not on the west side of the mountains. I know a small arroyo upon the mountains, about five miles or six from the house of Antonio Chaboya, which is called the arroyo los Alisos.

(Counsel for claimant objects to this answer as being irrelevant.)

Quest. 3d. How long have you known the arroyo of which you last spoke by the name "Arroyo de los Alisos ?

(Counsel for claimant makes the same objection to this question as to the preceding one.)

Answer. From about the year 1853; about the same time that I went over there.

408 (Counsel for claimant make the same objection to this answer as to the preceding one.)

Quest. 4th. In what direction is that arroyo of which you last spoke from the present residence of Antonio Chaboya ?

(Claimant's counsel makes the same objection to this question as to the last one.)

Answer. About east.

Quest. 5th. Is there not an arroyo, between one and four miles north of the present residence of Antonio Chaboya, running down the mountain in a westerly direction ?

(Counsel for claimant objects to this question as being irrelevant, as enquiring into new matter not brought out on the examination in chief, and leading in form.)

Answer. Yes, sir, there is one about two miles and a half or three miles north, I think, from the present residence of Antonio

409 Chaboya; I would not be certain as to the distance.

Quest. 6th. Have you travelled up or down that arroyo of which you have last spoken often ?

(Counsel for claimant objects to this question as being irrelevant, and upon the same grounds as stated as objections to question No. 5.)

Ans. Yes, sir.

Quest. 7th. Do you know the name of it ?

(Counsel for claimant makes the same objection to this question as to the preceding one.)

Answer. I have heard several names for it. I do not know that I do know any particular name for it.

Quest. 8th. Have you never heard it called Sycamore creek, or Sycamore arroyo ?

(Claimant's counsel makes the same objection to this question as to the preceding one.)

410 Answer. I do not think I have.

Quest. 9th. Can you now tell any name by which you have heard it called?

(Counsel for claimant makes the same objection to this as to the preceding question.)

Answer. I can. I have heard it called by the name of Wilson and Quivey's wagon road. I have heard it called the Corral arroyo, where Chico Bernal had a corral.

(Counsel for claimant objects to this answer for the same grounds as stated in the objections to the question of which this is an answer, and that a portion of it is not responsive to the question put.)

Quest. 10th. What is the name of the rancho of which you stated in your examination in chief you owned a part, and on which

411 side of the mountains of which you have spoken is it situated?

Answer. It is named Cañada Pala, and lays on the top of the mountains, east of the present residence of Antonio Chaboya. The western line of the rancho runs along the summit of the mountains, which mountains are east of Antonio Chaboya's house.

Quest. 11th. How far south does the Cañada Pala rancho extend, with reference to Antonio Chaboya's present residence?

(Counsel for claimant objects to the question because it is irrelevant.)

Answer. I don't know exactly where the southwest corner of the Cañada Pala rancho is, but I think it is about two miles further south than Antonio Chaboya's house; I know within fifty yards of where that corner is.

(Same objections made to this answer by counsel for claimants as made to the question of which it is responsive.)

412 Quest. 12th Can you now recall the first time you ever heard the arroyo which runs near Chaboya's house called arroyo de los Alisos? If so, tell us by whom, and when, and where you first so heard it called?

Answer. I can. In the year 1853, at a rodeo that Bruno Bernal made on the rancho Chaboya, I heard Antonio Chaboya and Bruno Bernal call it the arroyo de los Alisos.

Quest. 13th. How far from the arroyo were you at that time?

Answer. About a mile or a mile and a half.

W. C. WILSON.

Subscribed and sworn to before me, this 12th day of February, A. D. 1861.

JNO. B. HEWSON, *County Clerk.*

By agreement of the parties, the further hearing of the testimony herein is continued until Saturday, the 16th inst., at 11 o'clock, a. m.

413 *Dep. of Augustin Alviso.*

SATURDAY, *February 16th, A. D.* 1861.

Parties met pursuant to adjournment—present, as before—when Augustin Alviso, a witness, on the part of the claimant, is produced, sworn, and examined, and testified as follows. John Argos sworn as interpreter:

Questioned by counsel for the claimant.

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is Augustin Alviso; my age is fifty-one years; and reside at the rancho de los Ceretos, in Alameda county.

Quest. 2d. State whether, or not, you are the same Augustin Alviso who was present upon the rancho de Pala, at the time that Mr. Pico, as alcalde, went to give juridical possession of that rancho to José Joaquin Higuera, now deceased, in the year 1835.

Answer. Yes, sir; I am the same person.

Qest. 3d. In what capacity were you present, if any?

414 Answer. I was there as a chairman.

Quest. 4th. State now what was done, and all that was done, so far as you remember it, about the measurement of that rancho, on that occasion; at what point did the measurement commence, and where did it run to?

Answer. The measurement commenced from the house to the rincon of the arroyo del Aguage., and from thence, running along the arroyo, to certain trees, which trees stand about a mile and a half from the rincon de la arroyo del Aguage.

Quest. 5th. When you speak of commencing the measurement at the house on the rancho, what house do you mean?

Answer. The old house of Joaquin Higuera.

Quest. 6th. You say that from the rincon of the arroyo del Aguage you ran down and along said arroyo, until you reached some trees; now about how far are those trees from the arroyo del Aguage?

415 Ans. They are about fifty or sixty yards from a crook in the Arroyo.

Quest. 7th. State if you have lately seen on the bank of that arroyo del Aguage any oak tree or trees; and if so, what do they have to do, if anything, with the line of that rancho de Pala?

Ans. Where the measurement ended there was some oak trees called in Spanish encinos.

Quest. 8th. Now were those trees where the measurement ended growing upon or near the bank of the arroyo del Aguage, or were they any considerable distance from it?

Ans. They were on the edge of the arroyo.

Quest. 9th. Do you know of a thicket near the arroyo del Aguage sometimes called Montecito Alto, sometimes called "Sausal Grande?"

(Counsel for the U. S. objects to this question as being
416 leading, and suggestive to the witness of the name in connexion with the place of its location.)

(Counsel for claimant insists upon the question in this form, because it is nearly introductory and preliminary.)

Ans. There is a thicket there called Roblarcito del Alto.

Quest. 10th. Did you ever hear that thicket, of which you speak, called Sausal?

(Counsel for U. S. objects to this question, on the ground that it is leading.)

(Claimants insist upon the question, for the same reasons they gave in the last question.)

Ans. No, sir; the roblarcito is one, and the sausal is another.

Quest. 11th. State, if you please, about how far these trees which you speak of; on the banks of the arroyo del Aguage, are from the sausal of which you speak?

Ans. They are from eight hundred to a thousand varas,
417 more or less.

Quest. 12th. Do you know anything, of your own personal knowledge, as to measuring the line of that rancho on that occasion from those trees on the bank of the arroyo, running the line in a southerly direction from the arroyo? if so, state it.

Ans. I only know from hearsay that they run the line southerly to the point of the roblar del Socayre. I was not present. I can only state as far as I went.

(Counsel for U. S. objects to this answer, upon the ground that it is mere hearsay and inadmissible as proof.)

Quest. 13th. Do we understand you to mean that after the measurement of the line from the house to the rincon del Aguage, and from the rincon del Aguage down to those trees on the bank of the Aguage, you had no further connection with the measurement?

Ans. I went no further.

Quest. 14th. State in what way that measurement was made;
418 what thing was used in making the measurement?

Ans. It was done with a rope.

Quest. 15th. What was the length of that rope?

(Counsel for U. S. objects to this question, upon the ground that the length of the rope and the manner of the measurement is a matter of record in this case, and can neither be disproved nor affirmed by parol testimony.)

Ans. About one hundred varas long.

Quest. 16th. Do you know where the laguna Socayre is, or was at the time of that measurement? and if you say you do, state whereabouts it was with reference to the old house of Higuera.

Ans. I do know where the laguna Socayre was. It was about a mile to the south of the old house of Higuera, more or less.

Cross-questioned by counsel for U. S.

419 Quest. 1st. Describe the laguna Socayre as you knew it in 1835, with reference to its size, depth, and whether water was in it all the year or only part of the time.

Ans. It was a sort of a marsh, with some water in some seasons of

the year. It was a large place supposed to take in about 500 or 600 acres of land, where the waters collected and formed that laguna.

Quest. 2d. When were you on the Pala rancho last?

Ans. I do not recollect to have gone over the rancho since the measurement.

Quest. 3d. Do you mean to say that you have not been on the Pala rancho since the measurement of which you have spoken in 1835?

Ans. I may have been some time along that part of the rancho called Chimecitos. I do not recollect of being on any other part of the rancho.

420 Quest. 4th. Where is that part of the rancho you call the Chimecitos?

Ans. It is north of the rancho, towards the Berreyesas.

Quest. 5th. Had you ever been on the Pala Rancho before the time of the delivery of juridical possession in 1835? and if so, state how often, and when.

Ans. Yes; I was there before two or three times. It was before the year 1830 and about the year 1830.

Quest. 6th. When were you first inquired of by any person as to your knowledge of the judicial possession and the measurement in 1835, of which you have spoken; how many days, weeks, months, or years ago?

Ans. About twelve or fifteen days ago.

Quest. 7th. You never had occasion to talk with any person about the measurement of which you have spoken since it was made, until twelve or fifteen days ago, did you?

421 Answer. No, sir.

Quest. 8th. Never since 1835 have you been at the rincon del Aguage, or at the place where the trees stood to which you say you measured, on the arroyo de Aguage, have you?

Answer. I have not been at the rincon del Aguage since 1835; but I have been on the road near the Chemecitos, which are near the arroyo, and about 5 or 6 hundred yards from the said trees.

Quest. 9th. How far are those trees from the sausal of which you spoke in your examination-in-chief—I mean the trees on the bank of the arroyo, to which you say you measured?

Answer. From about eight hundred to one thousand varas, more or less.

Quest. 10th. How far is the sausal of which you spoke from the roblarcito of which you spoke?

Answer. About a mile, more or less.

422 Quest. 11th. In what direction is the sausal from the roblarcito?

Answer. It is about a northwesterly direction from the roblarcito.

Quest. 12th. What kind of trees were those you say you measured to in 1835, going the arroyo del Aguage?

Answer. They were encinos and alisos.

Quest. 13th. Are you sure they were not robles?

Answer. Yes, sir, I am sure that they were encinos and alisos, and that there were some robles a little distance from where we stopped.

Quest. 14th. Was any tree marked as a corner or boundary tree on that occasion of measuring?

Answer. There was a tree marked at the rincon del Arroyo. I did not see any other, for I was ahead with the line.

Quest. 15th. Did Pico go along with the measurers in making that measurement?

423 Answer. Yes, sir.

Quest. 16th. Was that an honest and true measurement, and were the distances measured at the time correctly understood by the persons there, so far as you know?

Answer. So far as I know, it was a correct and true measure; for I myself struck the pins, and Higuera and the parties interested, that were present, appeared to be satisfied.

Quest. 17th. Describe the lot or enclosure that stood north of the house of Higuera, facing the north, from which you commenced measurement.

(Counsel for claimant objects to this question, because the witness has not stated that the measurement commenced from any lot or enclosure north of the house of Higuera, but only from the house itself, and the lot on which it was situated.

The question is insisted upon as competent and proper, for the reason that in the record of judicial possession, in this case,

424 there is substantially the same designation of the locality inquired about as is contained in this question.

The objection is insisted upon because the counsel for the government is mistaken in supposing that any such locality as that named in this question is spoken of in the record to which he alludes.)

Answer. The measurement commenced from the northern side of the house of the deceased Higuera.

Quest. 18th. Do you mean to say that on that occasion you commenced the measurement at the northern side of Higuera's house, and measured from the house?

Answer. Yes, sir, I do.

Quest. 19th. Did you measure directly towards the hills, or north towards the arroyo Aguage, from the house of Higuera?

Answer. We measured from the house to the rincon de la Arroyo.

425 Quest. 20th. How far did the house stand from the hills which lay to the east of the house?

Answer. The hills behind the house, where the sun rises, are about six or seven hundred yards, more or less.

Quest. 21st. In measuring the first line of that measurement to the rincon of which you have spoken, did you not measure along the foot of the hills?

Answer. No, sir.

Quest. 22d. Are you sure of that?

Answer. Yes, sir, I am certain.

Quest. 23d. How near did you approach the hills that lay on your right in measuring that first line?

Answer. I said that it was about six or seven hundred yards, more

or less, to the hills; and as we were approaching the arroyo, we were all the time getting nearer the hills.

Quest. 24th. Did you run the line straight from the house to the rincon?

426 Answer. Yes, sir.

Quest. 24th. What was the length of that line?

Answer. Less than a league; perhaps two miles, or a little more, was the distance.

Quest. 25th. Why can you remember the distance from the rincon to the trees on the Aguage, of which you have spoken, so much better than the distance from the house to the rincon?

Answer. In those times we did not know what a mile was; but now we have acquired knowledge of such measurement, by practice, and I can be more precise of the distance from the rincon to the trees than from the house to the rincon, because the distance from the rincon to the trees is less than that from the house to the rincon.

Quest. 26th. Did you not measure both of those lines on the same day?

Answer. Yes, sir, we did.

427 Quest. 27th. Do you now know or remember how long either of those lines was, according to your measurement that day—in 1835?

Answer. I do not remember exactly; but I have said that the first line was less than a league, or about 2½ miles, more or less, and the second line about a mile and a half, more or less.

Quest. 28th. Do you know how much is a cordel in yards?

(Objected to by counsel for claimant, because it is known that a cordel is no more definite in its meaning, as to its length, than any other rope, or piece of rope.)

Answer. It is according to the length of the rope.

Quest. 29th. Who measured the rope, and determined its length, which you used on that day when judicial possession was delivered?

Answer. Higuera, deceased, measured the rope.

428 Quest. 30th. What did he do in measuring it, and how do you know the length of it?

Answer. I saw Higuera measure it with a vara measure.

Examination-in-chief resumed.

Quest. 1st. Are you positive that that cordel, with which the measurement was done on the rancho Pala, was one hundred varas long?

(Question objected to by counsel for U. S. as being leading.)

Answer. Yes, sir.

Quest. 2d. Why do you remember it so well? What happened to make you remember it so well?

Answer. I was carrying it and drawing it the whole day.

Quest. 3d. How did it happen that you quit assisting in the measurement as soon as you had measured down to the trees on the bank of the arroyo del Aguage?

429 Answer. Because they did not pay me for the work, and I quit and went off; they have not paid me yet.

Quest. 4th. Were you not on this morning, before your examination here commenced, out within view of the arroyo del Aguage?

(Objected to by counsel for U. S. as leading.)

Answer. Yes sir, I passed near by it on the road.

AGUSTIN ALVISO.

Subscribed and sworn to before me this 16th day of February, A. D. 1861.

JNO. B. HEWSON, *County Clerk.*

By agreement of the parties, the further hearing of the testimony herein is continued until Monday, the 4th day of March, A. D. 1861, at 11 o'clock a. m.

430 *Dep. of M. Ballow de Hamel on part of claimants.*

MONDAY, *March 4th,* A. D. 1861.

Parties met pursuant to adjournment—present as before—when Mitchell Ballow de Hamel, a witness on the part of the claimant herein, is produced, sworn and examined, and testified as follows:

[*Questioned by the counsel for the claimant.*

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is Mitchell B. de Hamel, my age thirty-one years, and my place of residence San José, Santa Clara county.

Quest. 2d. What is your occupation?

Answer. Chainman to the surveyor of Santa Clara county.

Quest. 3d. State if you have any knowledge of a tract of land lying east of the city of San José, called "Rancho de Pala;" and if you have, how intimate is your acquaintance with it, and
431 what opportunities you have had of gaining information about it?

Answer. Yes, I know the rancho de Pala; I helped Mr. Healy to make the last survey according the order of the U. S. district court, according to the juridical possession. I have also hunted over the rancho, and hunted for cattle and horses. I first knew what is called rancho de Pala some six or seven years ago—since 1854.

Quest. 4th. Do you know where the northwestern corner, and the southwestern corner, and the western line of that rancho is, as determined and fixed by Mr. Healy, in his late survey of the juridical boundaries of that rancho, by the order of the district court of the U. S?

Answer. I do; I helped Mr. Healy to chain it upon that survey.

Quest. 5th. In passing along that western line, going from the northwestern corner to the southwestern corner, state whether or not you pass by or near any arroyita or little arroyo: and if you say you do, please describe it, and state if you know from whence
432 it runs.

Answer. We did cross a small arroyo in running the western

line of the rancho Pala; the arroyo, from what I can see of it, corners from a laguna, by tracing it up.

Quest. 6th. Is the laguna from which it comes situated northerly or southerly of the direction in which the arroyo runs?

Answer. It is situated to the southward.

Quest. 7th. Do you know where the southern boundary line of the rancho of Pala, as fixed by Mr. Healy, on the occasion to which you have spoken, is?

Answer. Yes, I know where it is I helped to chain it.

Quest. 8th. State how far and in what direction from that southern boundary line is that laguna, out of which you say that little arroyo runs.

Answer. The laguna is to the north of the southern bound-
433 ary, and is about $\frac{3}{4}$ or a mile from the southern boundary, as near as I can judge.

Quest. 9th. Have you seen the place upon the rancho of Pala which is known as the site of the old house of Joaquin Higuera; and if so, is that laguna northwardly or southwardly of that place?

Answer. I have; the laguna is to the south of the place where the old house of Higuera was.

Quest. 10th. State whether or not you have lately examined that laguna particularly; and if you say you have, state what you observed, if anything, in relation to its present as compared with its former apparent size, and what you have ascertained generally by examination of it, as to whether it is now larger or smaller than it formerly was?

Answer. I have examined that laguna lately; it is a good deal smaller than what it was when I first knew it; when I first knew it, it was full of water; that was in 1850, and now there is but little water in it.

434 Quest. 11th. From your examination of that laguna and the surrounding country, if you made it, how large, judging from the appearance of the land, was that laguna in former years, and before you ever actually saw it?

(Counsel for the U. S. objected to this question, upon the ground that it asks for the opinion or judgment of the witness in relation to a matter about which he should state facts only.)

Answer. I should judge it was about three or four hundred acres in size.

Quest. 12th. State, if you please, what facts you observed, if any, to lead you to the conclusion that it was 3 or 400 acres in size formerly.

Answer. Because, when I first saw it, it was full of water.

Quest. 13th. Do you mean to state that an extent of land there, of about 3 or 400 acres, was covered with water at any time when you saw it; and if so, when did you see it in that condition?

435 Answer. I do, for I rode through one end of it; I saw it in that condition in 1849, 1850 and 1851.

Quest. 14th. About how large an area is now covered in that laguna with water?

Answer. I think about 40 or 50 acres.

Quest. 15th. State whether a person going now to that laguna, in its present situation, can discover any traces or indications of its former greater size; and if so, what are they?

Answer. They can. In the first place you can see where the hollow the mark of the laguna is; you can see that there is no grass around where the laguna was, and what grass is coming up is this short salt grass, which grows in low lands.

Quest. 16th. Standing at the site of the old house of Higuera, looking southwardly across that laguna where it formerly extended, how great a depression would there be with reference to seeing or not seeing any objects which might be in the laguna, as, for instance, cattle passing through the laguna?

436 Answer. There is a very great depression there. There is houses built there now near the laguna. You can hardly see the roofs of them by standing near where the old Higuera house was.

Quest. 17th. State if you observed any peculiarity in the land for two or three hundred yards southerly of the site of the old house of Higuera, or any peculiarity in the growth upon it, distinguishing it from any other portions of the land in the immediate vicinity; and if so, what peculiarity did you observe?

Answer. I did. From the growth of the weeds and mustard, it looked to me as though it was some old corral or barn yard.

(Counsel for the U. S. objects to the latter portion of this answer, upon the ground that it is the mere expression of an opinion: the witness's opinion is not evidence in relation to this matter.)

437 Quest. 18th. Have you ever had occasion to observe the effect that a continuous use of a spot of ground for a number of years as a corral or barn yard would produce upon the subsequent growth upon that spot as contrasted with neighboring pasture lands; and if so, what effect is produced generally?

Answer. I have. The effect is that the grass or weeds that grows on the place where the corral was, grows larger and is more prosperous than land adjoining it.

Quest. 19th. State whether the weeds and other growth, for two or three hundred yards southerly of that old house, is about the same as it is upon other adjoining portions of that rancho used simply for pasturage, or whether it differs; and if it does differ, wherein is that difference?

Answer. It differs a great deal in its growth to the southern of the house; the grass is larger and more prosperous than it is in any other part near the house.

438 Quest. 20th. State if you know where the arroyo los Alisos is.

Answer. I know where the arroyo los Alisos is, but it is only from hearsay.

Quest. 21st. Where is it?

Answer. It lays between the rancho of Antonio Chaboya and that of Higuera, on the southern boundary of the rancho of Higuera, ac-

cording to the late survey made by Mr. Healy of the juridical possession.

Quest. 22d. Do you know where the creek situated easterly of the old house of Higuera, which the squatters call and claim as "Sycamore creek," is?

Answer. I do.

Quest. 23d. Now, in passing from the northwest to the southwest corner and along the western line of the rancho, and taking the most favorable position upon that line, how many sycamore trees can be discerned on, or about, or near, to the so-called "Squatter Sycamore creek."

Ans. All that I could see was about two—one close by a
439 squatter's house, and another one just above it.

Quest. 24th. How far and in what direction is that squatter's house from the site of the house of old Higuera?

Answer. It is to the northward and eastward, and I think about three-quarters of a mile from the site of the old house of Higuera.

Quest. 25th. Now, continuing to pass down that western line still further, and taking the most favorable position upon the line for observation, and looking to the arroyo los Alisos, as located by Mr. Healy in his late survey, of which you have spoken as the southern boundary line of the rancho, how many sycamore trees, if any, and of what prominence, can be seen growing on, about, and around the arroyo los Alisos?

Answer. How many I cannot say; but there are a great many from the top of the mountain down to where Antonio Chaboya's house is.

Quest. 26th. Where does the arroyo los Alisos run with
440 reference to those trees of which you have just spoken, and where are the trees situated with reference to the arroyo?

Answer. The arroyo runs right down among them; the trees are all on each side of the arroyo.

Quest. 27th. At what distance from those trees on the Alisos can they be seen by a person approaching them from a westerly direction, so as to recognize them as sycamore trees at this season of the year?

Answer. About three miles, more or less.

Quest. 28th. State whether or not the most of the facts that you have stated here have not been made by you the subject of personal examination and investigation upon the rancho recently?

Answer. They have.

By agreement of the parties the further hearing of the testimony herein is continued until Tuesday, the 12th day of March, A. D. 1861, at 12 o'clock.

441 TUESDAY, *March 12th*, 1861.

The parties met pursuant to adjournment, present as before, when the parties now proceed with the examination of Mitchell B. de Hamel:

Quest. 29th, by counsel for claimant. In passing from the north western to the southwestern corner of the rancho, along its western line, as determined by Healy in his late survey under the order of

the court, do you or not pass over or near to any other arroyo except the arroyo which you say runs out of the laguna which you have described?

Answer. No other that I noticed.

Cross-examined by counsel for U. S.

Quest. 1st. What is the course of the arroyo of which mention was made in the last question?

Answer. From its rising from the laguna it runs northwest.

Quest. 2nd. What is the depth of that arroyo and its width at the place where the western line of Healy's survey crosses it?

442 Answer. As far as I can remember, it is from eight to ten feet deep and from thirty to forty feet wide, more or less.

Quest. 3d. Have you ever measured it to ascertain its depth or width?

Answer. I have never measured it, but I generally notice the depth and width of a ditch or gulch which I cross in making a survey.

Quest. 4th. Was there water running in that arroyo the last time that you were there?

Answer. There was no water running, but there was water in holes and spots around in it.

Quest. 5th. How far up and down did you trace that arroyo?

Answer. I traced it from near the Montecito Alto, or Big Willow grove, to the laguna, a distance of two or three miles, more or less.

Quest. 6th. Describe the Montecito Alto of which you

443 speak, and give its locality, with reference to the northwestern corner of the rancho, according to Healy's late survey?

Answer. The Montecito Alto is a thicket of willows near the Coyote creek, west from the northwestern corner of the survey made by Mr. Healy. The distance is about 3½ or four miles; it may be more or it may be less; I never measured it.

Quest. 7th. Are you familiar with the country between said northwest corner and said Montecito Alto; and if so, how often have you been there?

Answer. I am not very familiar, but I have been there five or six times.

Quest. 8th. Is the arroyo of which you speak of the same size about through its entire length?

Answer. No; the more you go towards the laguna the smaller it gets.

Quest. 9th. When did you trace that arroyo from the Montecito Alto to the laguna?

444 Answer. The first time about four months ago; the second time about two weeks ago.

Quest. 10th. How happened you to do so the first time, and who was with you?

Answer. The first time I was by myself; I was hunting duck, snipe, &c.

Quest. 11th. On which side of the western line of Healy's survey, and how far from it, is the laguna of which you have spoken?

Answer. The laguna lays to the east of the survey about ¾ or one mile.

Quest. 12th. Is there any other laguna within the space of two miles from the southwestern corner of Healy's late survey?

Answer. There are little spots of water; I would not call them lagunas.

Quest. 13th. What is the name of the laguna of which you have spoken, if it has any?

445 Answer. I have been told by old Spaniards that it is called the "Laguna del Socayre.

Quest. 14th. Give the names of some of those Spaniards who told you so?

Answer. Antonio Chaboya, Pedro Chaboya, and Herbacio Chaboya, and others, but I do not remember their names.

Quest. 15th. Do you not know that the laguna del Socayre is situated on the Yerba Buena y Secayre rancho, and entirely to the west of Mr. Healy's late survey?

Answer. No, I do not; there is a small laguna to the west of that survey, but it is called Laguna Seca.

Quest. 16th. How far from the southwestern corner of that survey is the laguna which you call Laguna Seca?

Answer. It is about a mile and a half, more or less.

Quest. 17th. When did you first come to California?

Answer. The 6th day of April, 1846.

446 Quest. 18th. Where did you first live in California?

Answer. In Monterey, with Gen. José Castro.

Quest. 19th. How long did you live there?

Answer. I lived there about two months.

Quest 20th. Where did you live next?

Answer. In the mountains, near where the Almaden mine now is.

Quest. 21st. How long did you live there?

Answer. I think about two or three months.

Quest. 22nd. When next?

Answer. Columbia river.

Quest. 23rd. When did you next come to Santa Clara county?

Answer. In the fall of 1852, just before I went home.

Quest. 24th. How long did you stay in Santa Clara county before going home at that time?

447 Answer. Some fifteen or twenty days.

Quest. 25th. When did you next come to Santa Clara county, and from what place?

Answer. In May, 1853, from San Francisco.

Quest. 26th. How far is the laguna you call del Socayre from the place where the old Higuera house stood, and in what direction?

Answer. The laguna begins about ¾ to a mile to the southeast of where the old house stood, more or less.

Quest. 27th. When did you first observe the difference between the weeds and grass for two or three hundred yards southerly from

the old Higuera house, and the weeds and grass on the neighboring lands?

Answer. About 12 or 15 days ago.

Quest. 28th. Is that land for two or three hundred yards southerly from that old house now being cultivated?

Answer. When I was there it was not.

448 Quest. 29th. Was your opinion formed from an observation of the growth of this year or the growth of last year?

Answer. From the growth of this year.

Quest. 30th. Is the land situated two or three hundred yards southerly from the old Higuera house, enclosed by a fence?

Answer. It is.

Quest. 31st. Has it ever been cultivated?

Answer. It may have been, but it did not look so when I last saw it.

Quest. 32d. Who was with you when you last saw it?

Answer. Mr. Allen, the husband of the claimant.

Quest. 33d. How tall was the grass or the weeds on the lands two or three hundred yards southerly from the old house of Higuera when you were there, twelve or fifteen days ago?

449 Answer. Some of it was about a foot high; other portions of it was about six inches high, and some of it was not more than two inches high. I mean that where the grass was about a foot high looked to me as if there had been a corral or barn there.

Quest. 34th. How large and in what shape is the place where you say the grass was about a foot high?

Answer. It was from seventy-five to a hundred yards square.

Quest. 35th. You have stated that you were a chainman on the occasion of the late survey of Healy under order of the court: who was the other chainman?

Answer. A part of the survey, the other chainman was a Frenchman, call Petit; the other part, Mr. Healy helped me as chainman.

Quest. 36th. Why did not the Frenchman continue as chainman to the close of the survey.

Ans. He give out; he could not stand it.

450 Quest. 37th. Did he not get drunk, and is not that the reason he gave out?

Answer. That is not the reason he give out; he was not drunk.

Quest. 38th. At what point did the measurement on that occasion commence?

Answer. It commenced at an oak tree at the foot of the hills near the house of Antonio Chaboya.

Quest. 39th. Which way and to what point was the measurement then made?

Answer. It was running southwest to an oak stump at the point of an oak grove.

Quest. 40th. What kind of oak was that stump of?

Answer. It looked to me like it was one of those common white oaks, such as is cut for firewood.

Quest. 41st. In what direction and to what point was the measurement then made?

Answer. It run northwest to a creek called arroyo de los
451 Aguages.

Quest. 42nd. In what direction and to what point was the measurement then made?

Answer. To the northward and eastward to a sycamore tree on the same arroyo, near the foot of the hills.

Quest. 43d. In what direction and to what point was the measurement then made?

Answer. We stoped there; I did not help him survey any more on that rancho.

Quest. 44th. On that occasion did you go to the place that is said to be the site of the old Higuera house?

Answer. No.

Quest. 45th. Were you there during the whole time of the measuring of the lines on that occasion?

Answer. I was.

Quest. 46th. What Mexicans or Spaniards were present;
452 and how long, and at what place?

Answer. The day we surveyed out the lines, there was no Mexican or Spaniard there?

Quest. 47th. You spoke in your examination in chief of a house, called in the question of Mr. Wallace "Squatter's house," as situated about $\frac{3}{4}$'s of a mile from the site of the old Higuera house; is that house the nearest one to the place you understand to be the site of the old Higuera house?

Answer. No; there is one or two, or may be three houses nearer to it than that one.

Quest. 48th. Do you know who lives in the house near which you stated in your examination a sycamore tree stands?

Answer. I do not know the persons named that lives there.

Quest. 49th. Do you not know that a house now stands quite near the site of the old Higuera house, and that a large sycamore
453 tree stands near that house, and that they are both very nearly opposite and west of the place where the arroyo Mr. Wallace called "Squatter's Sycamore creek" comes into the valley from the hills?

Answer. There is none that I know of nearer than the one which I have described.

Quest. 50th. How did you learn, and how long ago, the place where the old Higuera house stood?

Answer. I learned from seeing the house standing there in the spring of 1849, when I came back from Columbia river to the mines; and from the mines I came here.

Quest. 51st. Did you not state that you went from the mountains where the Almaden mines now are to the Columbia river, and that you next came to Santa Clara county in the fall of 1852?

Answer. I did; but I came once before that to Santa Clara county,

and then went back to the mines, and came back again in 1852, just before going home.

454 Quest. 52d. How long did you stay in Santa Clara county, when you say you came back in 1849?

Answer. I was here some four or five months before going back to the mines.

Quest. 53d. Is that the only time you were in Santa Clara county, between the time you went to the Columbia river and the time you came to Santa Clara county, just before going home?

Answer. I think it was, but I do not remember.

Quest. 54th. Where did you live and what did you do the four or five months you say you were in Santa Clara county in 1849, and what was the time of the year?

Answer. I was boarding with Mercia and Chattell. I did not do anything; I was riding about and hunting for my health; I had been a little sick. I think it was in May or June, and I staid here

455 until October; it was just before the rains that I started back to the mines.

Examination in chief resumed.

Quest. 1st. You stated in your direct examination that in the years 1849, 1850, and 1851 you rode through the laguna on the Pala rancho. Do you or not remember of returning here during those two years, or was your statement of the dates an error or not?

Answer. I do not remember of returning here in 1850 or 1851, but I do remember 1849 and 1852. I remember that in 1852 I rode through there with Antonio Chaboya. I wanted to sell him a couple of horses and a mule that I fetched down with me from the mines. I may be in error as to the years 1850 and 1851. I do not remember whether I came back in those years or not.

Cross-examined by counsel for U. S.

Quest. Where did Antonio Chaboya live in 1852, at the time you speak of?

Answer. He lived where he is living now.

Quest. Where did he live in 1849?

456 Answer. He lived in the same house that he is living now, except that the house has been enlarged since then.

MICHAEL BELLOW DE HAMEL.

Subscribed and sworn to before me this 12th day of March, A. D. 1861.

JNO. B. HEWSON,
County Clerk.

By agreement of the parties the further hearing of testimony herein is continued until to-morrow, at 10 o'clock a. m.

Dep. of Thos. Campbell on part of claimants.

WEDNESDAY, *March 13th*, 1861.

The parties met pursuant to adjournment, present as before, when Thomas Campbell, a witness on the part of the claimant, is produced, sworn, and examined, and testified as follows:

Questioned by counsel for the claimant.

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is Thomas Campbell; my age is forty-four years, and I live in San José, California.

457 Quest 2d. When did you first come to live in the county of Santa Clara?

Answer. In the fall of 1846 I first came into the valley of Santa Clara.

Quest. 3d. Did you ever have occasion to look for the south-western corner of the rancho of Pala, in question in this suit; and if so, when, under what circumstances, what means did you take to ascertain it, and where did you find it to be?

Answer. Yes. In the month of June or July, 1847, Mr. Hutton was surveying the lot of commons now called the five-hundred-acre lots. In surveying the outside boundaries, the owners of ranchos were notified to appear on the premises to show their corners and boundaries. The day that we were to survey the eastern boundary of the common lands of the pueblo, Mr. Bruno Bernal and one of the Mr. Higueras then met us at the then residence of Antonio Chaboya. They two and Antonio Chaboya showed us the southwest corner of the Pala rancho. It was a small white oak tree, a portion of

458 the top having been cut off. It stood two hundred and fifty or three hundred yards, more or less, in a northeasterly course from the then residence of Antonio Chaboya. The tree on the east side had a cross cut, apparently of ancient date. It once had been a forked tree; near the ground the fork came out. At that date the southern portion of that fork had been cut down or decayed anew, but the stumps remained, sufficient to indicate that it was once a forked tree. I was assisting the surveyor as chain-carrier.

(All that portion of this answer which states what Bruno Bernal and others said, and all that portion of the answer that is based upon what they said, is objected to by the counsel for the U. S. upon the ground that the same is hearsay, and based upon hearsay testimony.)

Quest. 4th. State where the then residence of Antonio Cha-

459 boya was, with reference to his present residence.

Answer. He lived at that time in the valley westward of his present residence about two and a half or three miles, more or less.

Quest. 5th. Running a line east from that southwest corner, about how far from the present residence of Antonio Chaboya would the line strike the foot-hills?

Answer. It would not be very far, half a mile or three-quarters, or more or less.

Quest. 6th. Do you know an arroyo with sycamore trees upon it a

little to the northward of the house of Antonio Chaboya, where he now resides?

Answer. Yes. sir.

Quest. 7th. What direction is that arroyo from that southwest corner of which you have spoken?

Answer. East.

Quest. 8th. Whereabouts, with reference to that arroyo
460 would a line running easterly from the southwest corner of which you have spoken strike the hills in your judgment?

Answer. It would strike the hills on the north side of that arroyo.

Quest. 9th. Do you know where, upon the western line of the Pala rancho. there is situated an oak tree, in the yard of the house now occupied by Chico Bernal, which is claimed by the squatters in this suit to be the southwestern corner of the rancho of Pala? And if you do know the tree to which I refer, please state how far and about in what directon it is situated from the southwestern corner of which you have spoken.

Answer. I do know the tree. As it regards the distance, I cannot state positive; it is a mile and a half, more or less, and in a northern direction from the said southwestern corner of which I have spoken.

Quest. 10th. Please state when you first saw that tree now in the yard at Chico Bernal's; whether, when you first saw it, it had
461 any mark upon it so far as you observed; and what you know, if anything, as to any mark being made or placed upon it; by whom was it done, and when, and for what purpose.

Answer. In running the lines between the Pueblo lands and the Pala ranch, and on the same occasion to which I refer in a former answer, that tree being a line tree, the surveyor instructed or told the man who carried the flag and the axe to mark it, which he did; there was no mark upon it, so far as I observed, previous to that time.

Quest. 11th. If there had been any such mark upon it at or previous to that time, would it or would it not probably have been seen by you on that occasion?

Answer. I think it would have been seen by me.

Quest. 12th. State whether or not your surveying party on that occasion, or you yourself, made any stop or rest under that tree; if so, what was it, and what circumstance, if any, occurred to fix it
462 in your mind?

Answer. We crossed a dry arroya in going to that tree. One or two rods south of it we stopped under the tree and laid down a few minutes. The day being warm, some of the party proposed to hunt for water in this dry ravine we had crossed in coming to this tree. Myself or some one of the party went in search, and in a depression in the bottom of this ravine, one or two rods east, more or less, of the place where we crossed it, we discovered an old Indian drinking water out of a hole which he had dug in this depression.

Quest. 13th. You say that in passing from the southwest corner of the rancho to that tree in Chico Bernal's yard, you crossed an arroyo or ravine just before reaching the tree. Now, in crossing that arroyo

looking to your right hand, which way or in what general direction would the arroyo run?

Answer. Southeast.

463 Quest. 14th. Describe that arroyo where you crossed it, as to its width and its depth.

Answer. In width it is from fifteen to twenty feet, more or less; its depth is from four to six feet, more or less.

Quest. 15th. State whether or not you have lately seen that lone tree standing in Chico Bernal's yard, and examined it; and if so, what did you find upon it with reference to the mark that you say was placed upon it in 1847? In what condition did you find that mark?

Answer. I have seen the tree lately and examined it. I discovered just below the mark which we placed on it in 1847, a notch, and on the north side opposite a similar notch. Neither of these notches was there in 1847.

Quest. 16th. State whether or not there is any other tree standing near Chico Bernal's house, except the one of which you now speak.

Answer. I do not recollect of any.

464 Quest. 17th. Do you remember the character of the mark which was placed on that tree in 1847?

Answer. It was a mark made with an axe; it was a representation of a cross; it was blazed off and not cut into the wood; there might have been a slight piece of wood taken off in blazing the tree with the axe, but I do not recollect.

Quest. 18th. Who did the cutting?

Answer. William West.

Quest. 19th. Where is William West now?

Answer. The last letter which I received from him, which was some two years since, he was then living in Dallas county, Texas.

Quest. 20th. Did you continue running the line in a northerly direction from the tree in Chico Bernal's yard; and if so, which way did the line which you ran bear from the tree—in what general direction?

465 Answer. We did continue running the line in a northerly direction from that tree in Chico Bernal's yard: we bore a little to the west of the direction of the line from the southwest corner to that tree. If we had continued the line from that tree in the same direction that it ran from the southwest corner to that tree, it would strike the Penitencia creek a little below the place where it comes out of the hills—in my judgment three or four hundred yards, more or less, if my recollection serves me.

Quest. 21st. State if you know of the locality upon the Pala rancho where the house of old José Joaquin Higuera stood.

Answer. Yes sir,

Quest. 22d. What indications, if any, have you observed showing the former existence of a corral near that house, and whereabouts was the corral with reference to where the old house stood?

Answer. On the south side of where the old house stood

466 there are indications of an old corral. I should judge from the growth of vegetation and the appearance of the soil, the vegetation on that piece of ground grows much more luxuriant than the

surrounding lands; this luxurious growth appears to be contiguous to and running south of the old house about one hundred and fifty or two hundred yards, more or less.

Quest. 23d. Have you examined the soil of what you suppose to be that old corral; if so, what indications, if any, did you find that it had been an old corral?

Answer. I have examined it, and from the appearance of the soil, such as we find in old corrals, and the growth of vegetation, I came to the conclusion that it was an old corral.

Quest. 24th. What indication, if any, did you ever see on that rancho of the former existence of any house, building, or any improvement, a little to the south of where the corral was?

467 Answer. There is at this time, from the appearance of the ground, indications of the former site of Indian huts.

Quest. 25th. What do you know in relation to the existence, upon the southern portion of the rancho of Pala, of a laguna?

Answer. When I first saw the Pala rancho, in 1847, in the southern portion of that rancho, there was a depression indicating a laguna. I saw it when dry; there was from three to five acres destitute of vegetation, and bearing the marks of having been covered with water during the wet or rainy season.

Quest. 26th. What direction is that laguna from the site of the old house of Higuera?

Answer. South.

Quest. 27th. Standing at the site of the old house of Higuera, looking across that laguna, how great a depression, if any, do you

468 discover with reference to any objects within or near the laguna?

Answer. I would suppose that a line on a level with the site of the old house of Higuera would show a depression of thirty or forty feet, more or less.

Quest. 28th. Have you made any observations lately upon the ground with reference to that fact; if so, what?

Answer. I have, from near where the old house of Higuera stood; looking southward across the laguna, there are some houses standing in the depression that you cannot see the tops of by several feet.

Quest. 29th. Do you know whether the direction that that laguna is from the present house of Chico Bernal is the same general direction in which the arroyo runs, which is near the lone tree, or is it a different general direction?

(Counsel for the U. S. objects to this question, on the ground

469 that it is leading and suggests to the witness the answer desired.)

Answer. It is the same direction.

Quest. 30th. Did you ever trace the course of that arroyo so as to satisfy yourself where it takes its rise, and whence it runs; if so, what did you find?

Answer. I never have traced the arroyo by running on its banks or its meanderings to the laguna; but from observation, and the direction and course of the arroyo and location of the laguna, it is my opinion that the arroyo comes out of the laguna.

Quest. 31st. Have you recently passed over that portion of the Pala ranch lying between the arroyo del Aguage and the site of the old Higuera house; and if so, did you find upon that portion of the ranch any arroyo or any laguna, and especially did you find any laguna with an arroyo running out of it?

Answer. I have been on that portion of the rancho lately; I saw no arroyo or laguna.

470 *Cross-examined by the counsel for the U. S.*

Quest. 1st. Name the persons who were with Mr. Hutton making the survey in 1847, of which you have spoken.

Answer. William West, James W. Weeks, and myself.

Quest. 2d. Was not William Daniels with you?

Answer. I do not recollect that he was.

Quest. 3d. Why did you not continue the line from the southwestern corner of the rancho, you have spoken of, in the same direction to the Penitencia that you ran it between said southwestern corner and the tree now standing in Chico Bernal's yard?

Answer. By so doing we would have left the corner of the rancho on Penitencia creek, being the northwestern corner of the rancho Pala, far to the west; therefore we would have missed the
471 northwest corner of the Pala rancho, as was shown to us by Higuera and Bernal.

Quest. 4th. Describe the locality of the northwest corner of the Pala rancho, as shown you at that time, as you say, by Higuera and Bernal, stating how far it is from the foot of the hills laying to the east.

Answer. It was a pile of stone lying on the south bank of the Penitencia creek, some thousand or twelve hundred varas, more or less, from the foot of the hills, where the Penitencia creek comes out from the hills. According to my recollection of it at this time, there were some ten or a dozen stones piled together; some of them were as much as a man could lift, and some smaller; the top stone was a large flat stone, on which the surveyor, Mr. Hutton, cut the letter "E," I think.

Quest. 5th. Was that pile of stones there when you first saw the place, in 1847?

Answer. Yes, sir.

472 Quest. 6th. Were they placed there by nature or by man, in your opinion, judging from their appearance?

Answer. From their appearance, I should judge that they were placed there by man.

Quest. 7th. What Higuera was the one of whom you have spoken? state who was his father, if you know.

Answer. He professed to be the son of the grantee of the Pala rancho, and son-in-law of Bruno Bernal, who was with us.

Quest. 8th. Was Antonio Chaboya present when the northwestern corner was pointed out?

Answer. He was not.

Quest. 9th. Why did you not run the line straight from the southwestern to the northwestern corner?

Answer. The parties professing to be in interest pointed out to us the southwest corner and the line to the northwest corner.

473 Quest. 10th. Did they point out to you the tree you say stands in what is now Chico Bernal's yard, as the point at which the course of the line should change?

Answer. They pointed that tree as a line tree, after having arrived at that tree; they then pointed the direction from that to the Penitencia creek. Following their instructions, we struck the Penitencia creek a few rods west of the pile of stones of which I have spoken as pointed out to us as the northwest corner of the Pala rancho; we then run up the Penitencia creek to that pile of stones.

Quest. 11th. You have stated that at that time you were engaged in surveying the common land of the pueblo of San José, as I understood you; was not the land west of said line and up to it along its whole length surveyed or divided into lots, and shortly afterwards disposed of to persons by the pueblo authorities?

474 (Counsel for the claimant objects to the latter part of this question, because it is not competent to establish either the title of the pueblo, nor a disposition by the pueblo of lands, by parol.)

Answer. I was engaged as such, and the land was disposed of shortly afterwards by the pueblo de San José.

(This answer objected to by the counsel for the claimant, upon the same grounds as stated in the objections to the question of which it is responsive.)

Quest. 12th. What position or office in the pueblo of San José, if any, did Charles White, now deceased, the then husband of the present claimant of the Pala rancho, hold; and what connection, if any, did he have with the survey or disposition of the lands of which you have spoken?

(Counsel for the claimant objects to this question, upon the grounds that the answer sought to be drawn out by the question is wholly irrelevant, and is new matter, and not responsive to any

475 evidence elicited on the examination in chief.)

Answer. At the time of the distribution, before and after, he acted as clerk to the alcalde, John Burton. I cannot say that in regard to the survey that he did anything more than the clerk of the alcalde could or would in such cases; at the time of the distribution he put tickets or numbers in a hat and called upon those persons who were entitled to draw, to draw for choice of lots that had been surveyed.

(This answer is objected to by counsel for the claimant, upon the same grounds as stated in the objections to the question.)

Quest. 13th. Did you personally examine with care for a mark on the tree which you say was blazed by the axeman on the occasion of the survey of which you have spoken?

Answer. I do not recollect that I made any minute examinations, but think that if there had have been any mark such as to indi-

476 cate a line tree or a corner tree of the rancho, I should have seen it.

Quest. 14th. Was that tree pointed out as a line tree before you reached it, or was it only stated so to be after you had measured up to it or near it?

Answer. After leaving the southwest corner it was pointed out as a tree to run to.

Quest. 15th. What particularly, at that time, distinguished that tree from other trees standing on the plain, and what kind of tree was it?

Answer. It was a tree that stood pretty much alone; it was a large spread-top white-oak tree.

Quest. 16th. Was any portion of the house of José Joaquin Higuera, then deceased, standing at the time you speak of, in 1847?

Answer. It was.

Quest. 17th. State if you know when that house disappeared, so as no longer to be recognized as a house.

477 Answer. I cannot state when the house disappeared; a portion of the walls all around the house were standing in 1847, but I think the north and east walls were higher.

Quest. 18th. Do you remember that a large sycamore tree stood near that house?

Answer. I do not.

Quest. 19th. Is it not quite common in this valley to see small places where the grass or weeds grow larger and faster than in other places close by?

Answer. Yes; I believe there is such places.

THOMAS CAMPBELL.

Subscribed and sworn to before me this 13th day of March, A. D. 1861.

JNO. B. HEWSON, *County Clerk.*

By agreement, the further hearing of testimony herein is continued until to-morrow, at 10 o'clock a. m.

478 *Dep. of A. M. Pico on behalf of claimants.*

THURSDAY, *March 14th*, 1861.

The parties met pursuant to adjournment—present as before,—when Antonio M. Pico, a witness on the part of the claimant, is re-introduced, sworn, and examined, who testifies as follows:

Joseph H. Scull sworn as interpreter.

Questioned by counsel for the claimant.

Quest. 1st. What was the length of the cordel which was used in the judicial measurement of the rancho of Pala, made under your orders in the year 1835, when you gave possession of the rancho to Higuera?

Answer. We originally measured the cordel fifty varas, but I proposed that to go on more rapidly with the measurement, that the length of the cordel be doubled; the length of the cordel was doubled, and we continued to measure from the foundation of the house of old Higuera to the rincon de la Aguage, north, with the cordel a hundred varas in length.

479 Quest. 2d. At what place did you commence the measurement of the rancho on that occasion?

Answer. We commenced from the house of the solar towards the rincon del Aguage.

Quest. 3d. How near to the house itself was the point at which you commenced the measurement?

Answer. The solar was measured first, so as to leave it out of the measurement of the rancho; we then commenced the measurement of the rancho about thirty yards from the house, the solar upon which the house was situated, consisting of one hundred varas square, was left out of the measurement.

Quest. 4th. Do you mean to say that you commenced the measurement of the rancho at the northern side of the solar upon which the house stood, and that this northern side at which you commenced was about thirty yards distant from the house itself?

Answer. Yes, sir.

480 Quest. 5th. Who wrote the espediente of the juridical possession of that rancho; in whose handwriting is the body of that paper?

Answer. In the handwriting of Don Zenon Fernandez, a Mexican; he wrote it.

Quest. 6th. What official position did he hold at that time?

Answer. I put him there as secretary in that measurement, and as surveyor.

Quest. 7th. It appears from the espediente of the juridical possession that the cordel with which that measurement was made was of the length of fifty varas state whether or not that is a mistake in fact, and how, if you know it, the mistake occurred.

Answer. At the time I signed the espediente, I did not know that the secretary had made any mistake; I merely signed the espediente.

481 I do not know how the mistake happened, but I conjecture that the secretary thought the cordel to be fifty varas. I am sure that the cordel was doubled, and that the secretary put it down at fifty varas instead of one hundred.

Quest. 8th. State, if you please, where was the southwestern corner of that rancho of Pala as fixed by you on that occasion, with reference to the house in which Anastacio Chaboya then lived.

Answer. The southwestern corner of that rancho was, looking from the house of Anastacio Chaboya, to the north and a little west, and some two hundred and fifty or three hundred varas, more or less, from the house.

Quest. 9th. State where the object called laguna del Socayre, named in the act of juridical possession, was; was it north, or was it south of the old house of José Joaquin Higuera?

Answer. It was on the south of old Higuera's house.

Quest. 10th. Which was it nearest to, the house of Higuera, or to the boundary line between the Pala rancho and Chaboya?

482 Answer. There was a very little difference, but it was nearer the boundary line between Chaboya's rancho and the Pala rancho.

Cross-examined by the counsel for the U. S.

Quest. 1st. What is the meaning of the word "Socayre," if it has any?

Answer. I have no idea what meaning it has, if it has any.

Quest. 2d. Have you known that word applied to anything except a laguna, and the Antonio Chaboya rancho; if so, to what?

Answer. I have only known it applied to the Chaboya and Higuera ranchos, and I have heard the name of Socayre mentioned in the pueblo by the people generally.

Quest. 3d. Have you ever heard the Pala rancho called by the name of "Socayre;" and if so, by whom?

483 Answer. No, sir, I have not, only by the name of Pala, although the laguna Socayre is in the rancho de Pala.

Quest. 4th. Do you not know that the laguna Socayre is to the southwest of the Pala rancho, and on the Chaboya rancho?

Answer. The laguna Socayre is on the southwest of the Higuera rancho, and north-northwest of the Chaboya rancho. I do not know exactly as to the cardinal points.

Quest. 5th. Is there not a laguna on the Chaboya rancho?

Answer. There is no laguna on Chaboya's rancho, the edge of the laguna Socayre may possibly be on the Chaboya rancho; there are some small deposits of water on the rancho.

Quest. 6th. How old were you in 1835?

Answer. I am now fifty-three years old.

Quest. 7th. Can you tell how old you were in 1835?

Answer. I do not remember how old I was in 1835. I am now 53.

484 Quest. 8th. Have you not observed that objects generally seem smaller and distances shorter now than when you were a young man?

Answer. I think they ought to be the same.

Quest. 9th. Who measured the cordel used by you in making the measurement of the Pala rancho in 1835?

Answer. Don Zenon Fernandez measured it, I think, as my secretary, or I may have measured it; I am not certain.

Quest. 10th. Did you know at the time that it was measured correctly?

Answer. Yes, sir.

Quest. 11th. Where was it measured, on the rancho, or at some other place?

Answer. I do not remember, but I think it must have been measured on the rancho.

485 Quest. 12th. Are you sure you did not measure it in the pueblo? Answer. No, sir; the cordels used to be measured on the

ranchos or places where we went to measure them, in the presence of witnesses.

Ques. 13th. Was it not always the practice to measure fifty varas as a cordel for measuring ranchos?

Answer. The custom was, when the judge thought it expedient to have it fifty varas or a hundred varas.

Ques. 14th. Did you not read or hear read the record of juridical possession before you signed it?

Answer. I heard it read and signed it when the possession was given.

Ques. 15th. Was the record of juridical possession written and signed on the rancho, or after returning to your office?

Answer. The record of possession was arranged and signed in the office in the pueblo.

Ques. 16th. When did you first discover the mistake, as you say, in the record of juridical possession, as to the length of the
486 cordel with which you measured?

Answer. I signed the act of possession as if there was no mistake, and did not know of any.

Ques. 17th. Have you not recently, and before you were examined as a witness in this case in San Francisco, had in your possession and examine a copy of the espediente of the judicial possession of the Pala rancho?

Answer. Yes, sir, I have.

Ques. 18th. Why did you not, in that examination, mention the mistake in the espediente as to the length of the cordel?

Answer. Because the question was not asked me; I was not questioned, as I am now, about the cordel.

Ques. 19th. Have you not told persons that the cordel used in that measurement was fifty varas long, and no more?

Answer. Yes, sir; I told some one yesterday that the cordel
487 was only fifty varas long, but that it was doubled to facilitate the measurement.

Ques. 20th. State particularly the process of this doubling of which you speak.

Answer. I recollect that the cordel was measured fifty varas long, and I agreed with the secretary that it be doubled and made a hundred varas, to facilitate the measurement.

Ques. 21st. In making that measurement, did the persons who carried the cordel ride or walk?

Answer. They rode on horseback.

Ques. 22d. Describe the cordel used on that occasion, as to material and size.

Answer. It was a rope; I do not remember of what material it was made; it was less than a finger in thickness.

Ques. 23d. Why did you measure the solar on which Higuera's house stood?

Answer. The secretary reminded me that it was necessary
488 to measure that solar for the location of the house.

Ques. 24th. Why was it necessary?

Answer. It was necessary, because it was the solar that corresponded to the house he had.

Ques. 25th. How far was that solar from the foot of the hills which lay to the east of it?

Answer. I do not remember how far it was.

Ques. 26th. About how far?

Answer. I cannot tell of a certainty; it was four hundred varas, more or less.

Ques. 27th. Do you, Mr. Pico, mean in this matter to swear that the cordel used on that occasion was one hundred varas long, after seeing a copy of the espediente, with your name signed to it, in which you see it stated that the cordel was fifty varas long?

Answer. When we determined to double the cordel and make it a hundred varas long, it was just the same as if it was fifty varas
489 long, in my mind.

ANTONIO MA. PICO.

Subscribed and sworn to before me this 14th day of March, A. D. 1861.

JNO. B. HEWSON.
County Clerk.

By agreement, the further hearing of testimony herein is continued until Monday, April 29th, 1861, at 11 o'clock a. m.

Dep. of Wm. Daniels, on behalf of the U. S.

MONDAY, *April 29th*, 1861.

The parties met pursuant to adjournment, present as before, when William Daniels, a witness on the part of the U. S., is produced, sworn, and examined, who testifies as follows.

Questioned by the counsel for the U. S.

Quest. 1st. What is your name, age, and place of residence?

Answer. My name is William Daniels; my age, 58 years; and I live in San José, Santa Clara county, California.

490 Quest. 2d. How long have you resided in San José?

Answer. Between fourteen and fifteen years.

Quest. 3d. What is your business, and how long have you been engaged in it?

Answer. My business for the last ten years has been that of a nurseryman and a fruit-grower.

Quest. 4th. Are you acquainted with the tract of land in Santa Clara county known as the Pala rancho, and now claimed by Mrs. Allen, widow of Charles White?

Answer. I have a very partial acquaintance with it as the Pala rancho.

Quest. 5th. State what you know, if anything, about the northwest corner of that tract of land; and if you know anything about it, state when and from whom you learned it, and what you saw.

Answer. I know nothing about any corner of that rancho;
491 I never heard any one say where any of those corners were.

Quest. 6th. State what you know about any monument or marked tree or trees on or near the arroyo del Aguage or Penitencia creek, within two or three miles from the mountains; and if you know anything about any such, state when and how you came to know them, and state particularly their locality.

Answer. In August, 1847, I was in company with the surveyors that ran off the 500-acre lots of the pueblo de San José; this was in laying off the division lines of the 500-acre tracts after the outlines had been run off. In running the first division line north and south, west of the eastern line of the tract above mentioned, in crossing the Penitencia, the company that was surveying, by order of the surveyor, made a pile of stones on the line that we run. We made no marks on any trees that day on that line; there were two trees, evergreen oaks, standing north of the Penitencia; there was
492 one on either side of the line we were running, but not opposite to each other; the first one was about 150 yards from the Penitencia, and the other about 100 yards further, more or less. In the latter part of February 1861, two men called on me, and asked me to go with them and see them take some blocks out of some oak trees. We went out about two o'clock on that day; they took me to a tree within 150 or 200 yards on the south side of the Penitencia creek; there they cut out a block from that tree, on the north side of the tree; they then took me to another tree about two miles south of the first tree from which the block was taken; they also cut a block out of that tree last mentioned, on the south side of it. The first tree near the Penitencia had marks on it; there had been a block previously taken out of that tree, apparently taking out a portion of the old mark; there was on the south side of the other tree the mark of a cross; they cut out a block, taking the beam and a part of the shaft of the cross. The age of the mark on the
493 first tree named, near the Penitencia and south of it, as indicated by the annual growth, is from twenty-six to thirty years; the block cut out of that tree I now produce, marked "D No. 1," which is now put in evidence in this case. The block taken out of the other tree indicates that there had been two marks made on this tree at different times where the block was taken out; the block was not taken out deep enough to indicate how long ago the first mark was made; there are plain indications that the last mark was made some fourteen or fifteen years ago. The block taken from that tree I now produce, which is marked "D No. 2," and put in evidence in this case.

Quest. 7th. State, if you please, what it is in the appearance of block No. 2, produced by you, which shows that there had been two marks on the tree from which it was taken, made at different times.

Answer. There has been a growth over the old mark before the last mark was made.

Quest. 8th. State how much, if at all, you have ever
494 attended to the matter of ascertaining the ages of trees by

the appearance of blocks taken from them, and state how or by what rule the age of a tree may be known.

Answer. I never before attended to the matter of ascertaining the age of trees by taking blocks out of them; every living tree makes a growth every year. I have been in the practice of cutting trees down ever since I can remember, to ascertain their growth; when a mark is made on a tree, it is sometimes made deeper and sometimes nearly touches the wood; all the rest part of the tree, except it's where the mark is made, is left undisturbed; the next year there is a new growth, and every following year there is a ring added as long as the tree lives; these new rings, formed in succeeding years, will approach each other over the mark, until (if the tree continues healthy) the two edges of the mark will unite; the age of the mark is ascertained by counting the rings on the tree that have grown since the mark was made, commencing at the edge of the
495 mark; every tree grows faster and forms softer wood the early part of the summer than it does in the fall; the wood is softer on the inner side of every year's growth than it is on the outer; the winter stops the growth of all trees that shed their leaves, and solidifies the outer surface of the previous summer's growth.

Quest. 9th. State, if you please, the locality of each of the trees from which the blocks were taken, with reference to the hills or some other object.

Answer. The northernmost tree is from 150 to 200 yards south of the Penitencia creek, and from a mile to a mile and a half from where the Penitencia creek leaves the hills, and about half a mile southwest of the pile of stones spoken of by me. The other tree is two miles from the first tree, in a southeasterly direction, and is nearer to the hills than the other; and is near the house of Chico Bernal, in his yard. These distances I have spoken of are nearly estimated by their appearance. I did not measure them.

496 Quest. 10th. What kind of trees were those from which the blocks were taken?

Answer. They were what is called here white oak.

Questioned by counsel for claimant.

Quest. 1st. State the names of the persons with whom you went out to cut those blocks of wood.

Answer. Mr. Houck and some other man whose name I do not know came for me, and they and Capt. Aram went out with me.

WM. DANIELS.

Subscribed and sworn to before me this 29th day of April, A. D. 1861.

JNO. B. HEWSON,
County Clerk.

By agreement, the further hearing of testimony herein is continued until Thursday, the 6th day of June, A. D. 1861, at 2 o'clock p. m.

497 *Agreement.—Dep. of Chas. T. Healy, on behalf of claim't.*

THURSDAY, *June 6th*, 1861.

The parties met pursuant to adjournment, (present, L. Archer, for the U. S., and W. T. Wallace, for the claimant,) when the said parties filed the annexed agreement, marked Exhibit "A," which is made a part of the evidence in this case. The counsel for the U. S. now puts in evidence the paper marked Exhibit "B," which is also hereunto annexed, and the counsel for the claimant admits the signatures to said paper to be genuine signatures, but objects to the said paper as evidence because it is irrelevant. The counsel for the U. S. now puts in evidence the paper marked Exhibit "C," which is also hereto annexed, and the counsel for claimant admits the signature of Henry Bee thereto to be his genuine signature, and makes the same objections to its introduction in evidence that he made to Exhibit "B."

Charles T. Healey is now introduced and examined on the part of the claimant, who, being first duly sworn, testified as follows:

On being questioned by counsel for claimant, he states that he is the county surveyor of Santa Clara county, and the same per-
498 son who has testified heretofore in this case.

Quest. 2d. State what is the distance from the plaza in the city of San José to the western line of the rancho Pala, as surveyed and returned by Mr. Wallace, U. S. deputy surveyor, in this case.

Answer. About three miles—I think a little more than three miles.

Quest. 3d. How many miles are contained in one Spanish league distance?

Answer. Two miles and five-eighths and a fraction of a chain over.

(Counsel for the claimant here exhibits to the witness a traced copy of a map of the Pala rancho, marked "J. B. & H., No. 1.")

Quest. 4th. State if you recognize on that map the locality marked Laguna del Socayre, and state if you recognize also the arroyito which seems to be issuing from that laguna; and if yea, now state where upon the rancho of Pala those objects are with refer-
499 ence to the southwestern corner of the survey in evidence in this case which you made for Henning and others, and are those objects north or south of that southwestern corner of the Henning survey.

Answer. I think I recognize the localities mentioned, and that they are south of the corner referred to, and south of the entire Henning survey.

Quest. 5th. State where that arroyito runs with reference to the house called the Chico Bernal house. Is it north or south of it?

Answer. It is immediately south of it, and quite near.

Quest. 6th. Where is that tree in the yard of the Chico Bernal house situated with reference to the house itself; is it north or south of the house?

Answer. I think it stands about eight or ten paces to the northeast of the centre of the house.

Quest. 7th. In running the line from the northwestern to the southwestern corner of the Henning survey, did you or not go sufficiently far to the southward as to pass by or over that arroyito?

500

Answer. I did not.

Quest. 8th. Stopping at the southwestern corner of the Henning survey, which you made, how much farther would you have had to go to the southward, upon a continuation of the same line, to reach a point opposite the locality upon the Exhibit "J. B. H. No. 1," called the Laguna del Socayre, according to the best estimate you can make?

Answer. About one mile, assuming that the point referred to called Laguna del Socayre is identical with the point marked waters of the Laguna Socayre, (at time of judicial possession,) as laid down upon a mark made by me, and marked Exhibit Healy No. 2, being the map made by me under the instructions of the U. S. surveyor general in January, 1861.

Quest. 9th. State whether or not you ever travelled along or in that arroyito in a southeasterly direction for the purpose of observing if you could from what point that arroyito ran, and what did you discover in relation to that matter.

501

Answer. I have. A large extent of country appears to be drained by said arroyo, which runs in a general westerly direction towards the Coyote. It appears to have its source at the point referred to upon the map marked "Exhibit Healy No. 2."

Quest. 10th. What direction is the point where that arroyo crosses the western line of Wallace's survey from the point where the arroyo takes its rise? Is it west?

Answer. It is northwesterly.

Quest. 11th. What is your estimate of the quantity of land that is drained by that arroyito?

Answer. It would be difficult to say, unless observations were taken during the wet season; hundreds of acres at least.

Quest. 12th. Have you ever examined to the southward of the site of the old house of Higuera for the site of an old corral said to have existed there and been used by him in his time? If so, did you find it, and what facts or appearances of growth or soil indicated its locality?

502

Answer. I have. The growth of grain and weeds was very rank as though cattle had been in the habit of standing in that vicinity. I think I observed there a growth of weeds peculiar to such situations.

Quest. 13th. State whether or not the location of that old corral, as you took it to be, is north or south of the most southerly point of the Henning survey.

Answer. The southern line runs through it.

Quest. 14th. State whether or not the southerly line of the Henning survey leaves out a considerable portion of the old corral, as you took it to be?

Answer. It does; whether more or less than half I am not able to say, the boundaries of the corral, as I took it to be, not being sufficiently definite.

503 Quest. 15th. How long have you been a surveyor?

Ans. About nine years.

Quest. 16th. Where?

Ans. In this country.

Quest. 17th. State whether or not during that time, and how much and how often, it has been your business and practice, under the orders of the surveyor general of the U. S. and otherwise, to locate, or assist in locating, the lines of Spanish grants, and whether and how much you are familiar with the rules and practice prevailing in making such locations.

Ans. I will state that I have been engaged frequently, as assistant and as U. S. deputy surveyor, in the location of private land claims, and I am tolerably familiar with the rules and practice observed in the performance of such duties.

504 Quest. 18th. State whether or not you are familiar with the locality of the Pala rancho, whether you have seen copies of the grant and diseño, and had the localities pointed out to you on a former occasion by persons claiming to have been present and assisting in giving juridical possession of that rancho of Pala.

(Counsel for the U. S. objects to the question as being immaterial.)

Ans. I am. I have seen the grant and diseño, and the location has been pointed out to me by parties professing to have given judicial possession to Higuera.

Quest. 19th. State if you know where on that rancho are the lines of the Wallace survey, about which this contest is being made.

Ans. I do.

Quest. 20th. With the light of all the information you have from the papers, personal examination of the rancho, pointing out of the localities, and the general investigation which you have given

505 to this matter heretofore, state, in your opinion as a surveyor, wherein, and how, if at all, Mr. Wallace's survey is erroneous or wrong; and whether and how you would, as a surveyor locating that rancho and its boundaries, make a different one from the one that he has made and returned in this case.

(This question objected to by the counsel for the U. S. upon the ground that the question seeks to elicit from the witness as evidence an expression of opinion in a matter about which witness's opinion is not competent evidence, and upon the further ground that the question contemplates and proposes to introduce as evidence the opinion of the witness in relation to the construction of written instruments and the ex parte statements of other persons.)

Ans. I am not so competent to give an opinion as I would have been had it been a part of my official duty to have heard the evidence and made the examinations for that purpose. My im-

506 pression is, however, positively that the survey by Mr. Wallace is as correct as could be possibly made under the circumstances.

(This answer objected to by the counsel for the U. S. upon the same grounds as are specified in the objections to the question.)

Quest. 21st. State whether or not, in your examinations upon that rancho and observations there, you have found many trees upon the

rancho marked with blazes, crosses, or other marks, varying apparently in age from quite recent to quite old marks, being other trees than those identified as marked trees in this case.

(Counsel for the U. S. objects to this question on the ground that it is leading.)

Ans. There are several other trees having old marks of a cross.

Quest. 22d. State whether or not you ever stood at or near the site of the old house of Higuera, looking to the southward at
507 the locality marked upon Exhibit J. B. H. No. 1 as Laguna Socayre? And if so, did you find that locality to be level, or did you find it to be hilly, or did you find it to be depressed or a basin? Please describe how it was in those particulars.

Ans. I have. It was depressed, having the appearance of a basin.

Quest. 23d. State something with reference to surrounding objects, to give an idea of how great the depression is there, and how much of a basin is formed there.

Ans. I observed that some of the houses could not be seen until approached and viewed from a shorter distance, being in the basin and overlooked from the point at Higuera's house.

Quest. 24th. State whether or not that basin is the same one out of which the arroyito of which you have spoken runs, or is it another and different basin?

Ans. It is the same.

508 (Exhibit "J. B. H. No. 1" is now introduced and filed by the claimant in connection with the evidence of this witness.)

By agreement of the parties the further hearing of the testimony is continued until to-morrow, at 11 o'clock a. m.

FRIDAY, *June 7th*, 1861.

The parties met pursuant to adjournment, present as before, when the examination of the witness, Charles T. Healy, is continued as follows, and cross-examined by counsel for U. S.

Quest. 1st. In what direction is the Pala rancho from the city of San José?

Ans. Northeasterly.

Quest. 2d. What is the distance from the plaza, in the city of San José, to the Guadalupe river, and on which side of said city is said river, with reference to the Wallace survey of said rancho?

509 (This question is objected to by counsel for the claimant as immaterial.)

Ans. The distance is about a quarter of a mile. The river is on the opposite side from the said survey.

(This answer objected to by claimant as being irrelevant.)

Quest. 3d. What is the boundary line of the old pueblo of San José on the west?

(Counsel for claimant objects to this question as being immaterial, and the evidence of this witness is not competent to prove that boundary line.)

Ans. The Guadalupe river.

(The same objections made to this answer as to the question by

claimants counsel, and because it does not appear what means of information or knowledge the witness has as to said boundary line.)

Quest. 4th. How far from the southwest corner of the Hen-
510 ning survey of said rancho spoken of by you is the western line of the Wallace survey at its nearest point, and on which side thereof?

Ans. The line is about $\frac{3}{8}$ of a mile southwesterly from the corner.

Quest. 5th. How far is the western line of the rancho, as surveyed by you in January last, from the western line of the Wallace survey at the point nearest said southwest corner of the Henning survey, and on which side thereof is it?

Ans. About a quarter of a mile southwesterly.

Quest. 6th. Do you consider the map marked Exhibit "J. B. H. No. 1" an accurate representation of the land apparently embraced in it?

Ans. I do not.

Quest. 7th. Is not the course of the arroyo del Aguage, as laid down on that map, considered in relation to the hills, as laid down thereon, very inaccurate; and if so, wherein?

Answer. It is. It is represented as running nearly south,
511 when it runs southwesterly.

Quest. 8th. State whether the arroyo del Aguage empties into the arroyo del Coyote; and if so, state where it does so, with reference to the northwestern corner of the Wallace survey of the Pala rancho.

Answer. I do not think that it empties into the Coyote through a well-defined channel; it spreads in a large willow swamp along the banks of the Coyote, which is situated southwesterly from the said corner, a distance of upwards of a mile from the said corner. These willows, or a portion of them, have been called the Montecito Alto. The Penitencia creek, which empties into the bay of San Francisco, has its source in the swamp referred to.

Quest. 9th. Do the waters of the arroyo del Aguage, in fact, enter into the Coyote creek at all by any channel that you know anything of? And if so, tell where that channel is.

Answer. I do not know of any well-defined channel of the arroyo del Aguage that empties into the Coyote. There is a deep
512 cut in the eastern bank of the Coyote which, in the wet season, drains the swamp and willows before alluded to; but whether the channel connects with the channel of the arroyo del Aguage I am unable to say, never having examined to ascertain. My impression is it does not.

Quest. 10th. Are not the arroyo del Aguage and the Penitencia creek the same stream, and only called by different names?

Answer. They may be so considered, though, as I before stated, the channels are not continuous. I think they were not called the same stream in former years.

Quest. 11th. State if there is now, or has been at any time within your knowledge, any laguna at or near the place represented on the map made by you in January last by the words "waters of the Laguna Socayre," &c.

Answer. Upon the map referred to I have written the word "water" at the points where I found water to exist at the
513 time of making the survey. I do not know of any laguna at any other point in that vicinity. The point referred to in the question is a broad depression only, but I have never of my own knowledge known of a laguna to exist there.

Quest. 12th. Have you not always known the point marked "water," outside of the boundaries of said map made by you in January last, and southwest therefrom, as the laguna del Socayre, until Pico or somebody else told you otherwise, in January last?

Answer. I have, until about the time of making that survey; I was then told otherwise by Pico and Antonio Chaboya, and perhaps others; I cannot now name them.

(The latter part of this answer objected to by the counsel for the U. S., upon the ground that it is not responsive to the question, and that it is mere hearsay.)

Quest. 13th. Have you a definite idea of the point or line, in the direction of the old Higuera house, which divides the waters
514 in the wet season, which run in the arroyito spoken of by you, from the waters that flow more northerly? If so, state where such line is, giving the distance from the site of said old house.

Answer. I cannot say that I have. The slope of the land and the course of the streams in that vicinity are generally westward.

Quest. 14th. What is the size and shape of the piece of ground which you say indicates the site of an old corral, near the old house of Higuera?

Answer. It is quite indefinite, and the peculiar growth to which I have referred to, perhaps occupied from twenty to forty yards square.

Quest. 15th. Is it uncommon in this valley to see small spots of ground on which the vegetation is larger and more luxuriant than it is on the surrounding land?

515 Answer. I do not know that it is.

Quest. 16th. Give us the name and the description, if you can, of the weed that seems to indicate the locality of an old corral.

Answer. I cannot describe it without having it before me. I know it when I see it.

Quest. 17th. Did you ever see that peculiar weed at any other place; and if so, where?

Answer. I have seen it frequently in corners of fields, around outbuildings, and places frequented by cattle, which gave me the impression that it was an indication of the gathering and standing of cattle, though its growth may be occasioned by other causes.

Quest. 18th. Is not the place where the arroyo del Aguage comes out of the hills a point easily found and known?

Answer. It is.

516 Quest. 19th. If from that point you measure along that stream towards the west (two thousand) 2,000 varas in a straight line and stop, how far are you then from the northwest corner of the Wallace survey, and in what direction therefrom?

Answer. About three-quarters of a mile northeasterly.

Quest. 20th. If you then measure southerly the distance of (five thousand five hundred) 5,500 varas in such a course that you would be eighteen hundred and fifty varas from the foot of the hills lying to the east, how far would you then be from the southwest corner of the Wallace survey?

Answer. I would say, without reference to my notes or use of the scale, about two miles, in a northwesterly direction.

Examination in chief resumed by counsel for claimant.

Quest. 1st. Do you know the distance from the site of the
517 old house of Higuera to the point where the arroyo del Aguage comes out of the hills? if so, state it.

Answer. A little less than three miles.

Quest. 2d. What difference is there in that distance that you have named from the distance of five thousand varas?

Answer. About a quarter of a mile. It is about a quarter of a mile more than five thousand varas from the site of the old house to where the Aguage comes out of the hills.

Quest. 3d. Suppose that the distance between those two points was estimated or called only twenty-five hundred varas, how much difference would there be between that distance and the actual distance which those objects are apart?

Answer. About a mile and a half. The distance is actually about a mile and a half greater than twenty-five hundred varas.

Quest. 4th. Do you know the length of the western line of
518 the rancho de Pala, as fixed by you upon the information of Mr. Pico, as being the line of the judicial possession given in 1835?

Answer. It is three hundred and sixty-seven chains in length.

Quest. 5th. What is the difference between the distance of three hundred and sixty-seven chains and the distance of eleven thousand Spanish varas?

Answer. Upwards of a mile and an eighth. The line measured by me is a mile and an eighth shorter than eleven thousand Spanish varas.

Quest. 6th. How much longer is that line than five thousand five hundred Spanish varas?

Answer. The line is nearly a mile and three quarters longer than 5,500 Spanish varas.

Quest. 7th. Suppose that you commenced at a point and run two thousand varas to the west, and then run five thousand five hundred varas to the south, and then eighteen hundred and fifty varas
519 to the east, and from that point to the place of beginning, what quantity of land would be embraced?

Answer. About eighteen hundred acres, or about three-eighths of a Spanish league.

Quest. 8th. Supposing that you doubled the length of each of the lines given in the last question, how much land would be embraced within the lines?

Answer. About seven thousand four hundred acres.

Cross-questioned by counsel for U. S.

Quest. How far is the site of the old house of Higuera from the foot of the hills, to the east of it?

Answer. About a half mile.

Quest. How far is the arroyo del Coyote from the plaza, in the city of San José?

Answer. About one mile.

520 CHAS. T. HEALY.

Subscribed and sworn to before me this seventh day of June, A. D. 1861.

JNO. B. HEWSON, *County Clerk.*

Dep. of Jasper D. Gunn, on part of claimants.

Jasper D. Gunn, a witness on the part of the claimant, being duly sworn, testified as follows:

Questioned by counsel for the claimant.

Quest. 1st. Do you know James W. Weeks?

Answer. I do.

Quest. 2d. Is he the same James W. Weeks who has resided here many years, and was formerly alcalde here?

Answer. I have known him to reside here for the last nine years. I understand him to be the same person who was alcalde of the pueblo de San José.

521 Quest. 3d. How long have you yourself resided here, and what is your occupation?

Answer. I have resided here a little over nine years, and I am city marshal of the city of San José.

Quest. 4th. Where is James W. Weeks now?

Answer. I believe he lives about twenty miles from here on the Llagas creek, in this county.

Quest. 5th. What is the mental condition of James W. Weeks at this time, as to his sanity or insanity?

Answer. I have not seen him for some two or three months; at that time he was insane.

Quest. 6th. What do you understand and what have you learned as to whether or not he is still insane?

Answer. About five or six weeks ago, his son told me that he was in the same condition.

JASPER D. GUNN.

Subscribed and sworn to before me this seventh day of June,
522 A. D. 1861.

JNO. B. HEWSON,
County Clerk.

Agreement.

By agreement of the parties the further hearing of testimony herein is continued until to-morrow, at 11 o'clock a. m.

SATURDAY, *June 8th*, 1861.

The parties met pursuant to adjournment—present as before—when the claimant now offers in evidence the paper hereto annexed, marked "Exhibit T. B. H., No. 2," purporting to be the affidavit of James W. Weeks, taken and subscribed by said Weeks on the 1st day of September, A. D. 1858, before Sherman O. Houghton, a notary public of Santa Clara county; which is objected to by the counsel for the U. S., upon the ground that the same is inadmissible as evidence for any purpose in this proceeding, the same being a mere ex parte affidavit, and upon the further ground that the United States never had any opportunity of cross-examining the said Weeks.

523 *Clerk's certificate.*

STATE OF CALIFORNIA,
County of Santa Clara, ss:

I, John B. Hewson, county clerk of the county of Santa Clara aforesaid, do hereby certify that, in pursuance of the stipulation attached at the head of this record and in the presence of the said Lawrence Archer and said William T. Wallace therein mentioned, respectively, the foregoing depositions of Henry Bee, José Noriega, William C. Wilson, Augustin Alviso, M. B. de Harnel, Thomas Campbell, Anto M'a Pico, C. T. Healy, and Jasper D. Gunn, respectively, witnesses on the part of the claimant herein, and William Daniels, a witness on the part of the United States, were taken and subscribed and sworn to before me, by said witnesses, respectively, and the several exhibits were made a part of their respective depositions, and the several objections were taken by the respective counsel as are fully set forth in the foregoing record.

In witness whereof, I have hereunto set my hand and affixed my official seal, this eighth day of June, A. D. 1861.
[SEAL.]

524 JNO. B. HEWSON,
County Clerk.

Exhibit B.

Jusgado del pueblo de San José de Gde.

Know all men by these presents, that, in accordance with the decree of the junta of the pueblo de San José de Gde., in Upper California, passed and entered of record on the twenty-ninth day of June, A. D. 1847, and in accordance with the confirmatory decree of the people of said pueblo, passed in primary assembly on the thirtieth day of June, of the same year, and entered of record in my office,

and in accordance with the laws and usages obtaining in such cases, I, James W. Weeks, first alcalde of the pueblo de San José de Gde. duly appointed and qualified according to law, do loan unto Henry Bee and his heirs ——— forever, for their use, behoof, and benefit, a tract of five hundred acres, more or less, of the unoccupied lands of the pueblo de San José de Gde. being known on the plot of a
525 survey made by James D. Hutton, esq., as lot No. seventy-fourth, descriptions and boundaries of which lot are more fully described on the back of this instrument, being subject to the following conditions and limitations, to wit: 1st. Said lot of land shall be subject to a municipal tax of three dollars pr. annum, to be paid on the first day of January, in each year, to the treasurer of said pueblo.

2d. There shall be planted at each corner of every lot a fruit tree, or tree of some other kind, as a distinctive mark of its boundaries, on or before the expiration of twelve months from date of this instrument; said trees or marks to be forever preserved.

3d. The municipal authorities of the pueblo de San José de Gde. shall forever retain the right of opening and keeping open any roads that may be useful to the public, through any of said lands.

In witness whereof, I have, in behalf of the junta and people of the pueblo de San José de Gde., I have hereunto affixed my hand
526 and seal, this twenty-third day of Sept'r, A. D. 1847.

JAMES W. WEEKS,
Alcalde Pueblo de San José de Guadalupe.
CHAS. WHITE, *Cl'k.*

Endorsed: Title of Henry Bee to lot No. 74, recorded in a book of records entitled Register of Lands, page 116, by Chas. White.

Exhibit "C."

Know all men by these presents, that I, Henry Bee, of the Pueblo de San José, Upper California, in consideration of the sum of one hundred and fifty dollars to me in hand paid by T. M. Leavenworth, of San Francisco, before the ensealing and delivery of this instrument, the receipt whereof is hereby acknowledged, doth hereby, he, himself, his heirs, ex'rs, administrators, and assigns, acquit and discharge the said T. M. Leavenworth, his heirs, ex'rs, adm'rs, and assigns forever; and I the said Henry *Henry* Bee, for myself, my heirs, and ex'rs, adm'rs and assigns, hereby grants and releases, remises,
527 and forever quitclaims, unto the said T. M. Leavenworth, his heirs, ex'rs, adm'rs, and assigns, all my right, title, interest, claims, and demands whatsoever, in *in* law and equity, of, in, and to the lot numbered (74) seventy-four, lying in the aforesaid pueblo de San José, and granted to me in accordance with the decree of the junta of the said pueblo, the third day of September, 1847; being the same lot or tract of ground known on the plot of a survey made by James D. Hutton, esq., and thereon numbered seventy-four (74,) and containing five hundred acres, more or less.

In witness whereof I have hereunto, for myself and in behalf of

my heirs, &c., as above mentioned, set my hand and seal this 31 day of Jan'y, 1848.

HENRY BEE.

The interlineation between the fifth and sixth line being made before sealing and delivery.

Witness present,

T. BATES, *M. D.*

Endorsed: Filed for record 28th August, 1849, and recorded
528 same date in Book 5, page 213, Archives San José.

(Here follows plat, page 528.)

529 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Manderville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the one preceding and hereunto annexed page of tracing paper, numbered one inclusive, exhibit a true, full and correct copy of the diseño (map) contained in and constituting a portion of a document endorsed "No. 638, Charles White. Pala. A grant, map, confirmation and judicial possession, filed in the office Feb'y 26, 1853, and annexed to the depo. of José Castro, marked H. H. No. 1, before Com'r Hiland Hall, March 1, 1853. Geo. Fisher, Sec'y. Recorded in Book of Rec. of Ev., vol. XVI, page 122 to 130,"—as the same appears on file in case No. 638, on
530 the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the
[SEAL.] city of San Francisco, this 3d day of September, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Exhibit J. B. H. No. 2.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On the 1st day of September, A. D. 1858, before me, a notary public in and for said county, personally came James William Weekes, who having been by me duly sworn, upon his oath says: That my name is Jas. W. Weekes; I have resided in this State since 1832,

most of the time in the pueblo de San José; my age is about 45 years.

I knew the place lying east of the city of San José called the
531 rancho de Pala, upon which Joaquin Higuera formerly resided. In the year 1847 John Burton, alcalde of San José, marked out the boundary line between that rancho and the lands of the pueblo de San José; he was assisted by Mr. Hutton as surveyor. The line there ran was then recognized as the west line of the said rancho, and commenced at the stump of a tree a short distance from the house of Anastacio Chabolla, and running straight to the Aguage, which it struck some considerable distance from the hills, and passing in its course two trees at about two-thirds of the distance from the stump at the point near Chabolla's house, the line ran towards the northwest from the stump near the house of Chabolla. At the point where the line reaches the Aguage there were two live oaks, and one or both of them was marked. I was formerly alcalde of the pueblo de San José under the Mexican government. I succeeded in that office to John Burton. I heard Higuera and Alcalde Burton and others say, after Hutton made the survey of the pueblo lots,
532 that he had run over the line of Higuera's rancho de Pala in surveying these lands; this was done in dividing up the land in lots, as the object was to make a certain number of lots out of the land.

JAMES W. WEEKES.

[SEAL.] Subscribed and sworn to before me this 1st day of September, A. D. 1858.

SHERMAN O. HOUGHTON,
Notary Public.

Endorsed: Filed June 20, 1861.

W. H. CHEVERS, *Clerk.*

533 *Opinion on survey.*

THE UNITED STATES *vs.* CHARLES WHITE. } No. 233. "Pala."

Objections to survey.

The grant in this case was for one square league of land. In the decree of confirmation the boundaries are stated in the record of judicial measurement, are adopted and the extent of land is declared to be one square league, more or less.

Those boundaries are substantially as follows: "Commencing at a solar which lies to the south of the rancho, and faces towards the north, and running thence along the foot of the hills 2,500 varas to the arroyo del Aguage; thence along said stream towards the west, 2,000 varas, to the sowing lands formerly used by the grantee, and to a marked oak tree; thence southerly, passing by the laguna del Socaire and the arroyito which rises from the same, 5,500 varas, to the first tree of an oak grove marked as a boundary; thence easterly 1,850 varas, passing along the arroyo de los Alisos, to the foot of the range of hills running from north to south.

534 It is objected on the part of the U. S. that the lines of the offi-

cial survey do not conform to the lines thus described, in respect either of their length or the objects indicated as their points of commencement and termination, and a survey has been presented to the court to illustrate how, in the opinion of parties claiming under the U. S., the official survey should be made.

It will be noted that the first line of the judicial measurement is described as running from the solar which looks to the north to the rincon del Arroyo del Aguage, a distance of 2,500 varas.

The objects thus referred are identified beyond any doubt, but the distance between them is found, on an accurate measurment, to be about 5,000 varas, or nearly double the distance mentioned in the act of possession.

I do not understand it to be claimed, on the part of the U. S., that the length of this line should be determined by the call for dis-
535 tance, disregarding the natural objects from and to which it is to be drawn.

But it is contended that the lengths of 2d, 3d and 4th lines should be thus mentioned in the act of possession; and testimony has been taken to prove that at or near the terminations of the northern and western lines so run, are found the marked oak trees referred to in the record and established as boundary marks.

The most important controversy is as to the length towards the south of the western line.

It has already been stated that, according to the record of judicial measurement, the first line was run from the solar north, 50 cordels of 50 varas each, or 2,500 varas, to the rincon. The 2d, or northern line, was drawn west from the rincon to an oak tree on or near the banks of the arroyo de Aguage, 40 cordels, or 4,000 varas; the third line from the oak tree, south to another oak tree, the first of a grove, 110 cordels, or 5,500 varas.

It is contended that the western line should be drawn from an oak tree near the banks of the Aguage, S. to another marked oak,
536 distant 5,143 varas. In length this line more nearly conforms to the length of the western line, as given in the record of judicial masurement, than that run to the oak tree, adopted in the official survey; for the latter is distant from the Aguage about 8,863 varas. But it is nevertheless plain, in my judgment, that the official survey is, in this particular, correct.

It has already been remarked that the position of the solar, the point of beginning of the first or eastern line, and that of the rincon, its point of termination, are determined beyond controversy. The distance between these points is stated in the judicial measurement to be 50 cordels, or 2,500 varas.

The length of the western line, parallel to this, is stated in the same record to be 110 cordels, or 5,500 varas. Whatever, then, may in fact have been the length of the cordel used, or the accuracy of the measurement, it is plain that the officer intended to measure,
537 and supposed he had measured, to a western line of twice the length of the eastern line. But the eastern line, on accurate survey, is found to be only $\frac{1}{4}$ of a mile less than 5,000 varas in

length. If, then, the western line be measured to the tree contended for by the U. S., i. e., of the length 5,143 varas, the two lines would be of nearly equal length, contrary to the terms of the record that the latter was to be more than double the length of the former.

Again: it is stated in the record that from the tree on the Aguage the line was run "to the south, passing by the laguna de Socaire, and the arroyito which rises from it to an oak tree the first of a grove," &c.

The position of this laguna and the arroyito issuing from it are identified, I think, beyond reasonable doubt; and even if the laguna be that to the SW. of the one contended for by the claimants, it would only show that the western line should be extended towards the south, even further than has been done in the official survey.

538 This laguna is situated at a considerable distance to the south of the ancient house of Higuera. But if the western line be made to terminate at the point contended for by the U. S., and the southern line be run thence east to the foot of the hills, it will leave the laguna far to the south. It seems to have been intended by one of the witnesses on the part of the U. S. to convey the idea that a laguna formed by a creek which flows from the hills and passes near the house of Higuera was the laguna de Socaire referred to in the record. This same creek the witnesses for the U. S. zealously maintain to be the arroyo de los Alisos mentioned in the act of possession as forming the western boundary. But this theory is inconsistent with the proofs, and even is self-contradictory, and for the following reasons:

1st. The act of possession speaks of a laguna and arroyito which issues from it, or to which it gives birth. But the laguna sug-

539 gested is formed by a creek which flows into it, but which does not flow from it.

2d. The record states that after passing by the laguna and the little brook which is born of it, a tree was marked (the first of a grove,) and from thence running towards the east, they followed the margin of the arroyo de los Alisos until they reached the foot of the hills. It is obvious that the arroyo de los Alisos, which meandered to the foot of the hills in running the southern boundary, was a different stream from the arroyito issuing from the lake which had been passed in running the western line.

It is, therefore, apparent either that the laguna suggested by the witness, into which a brook flows, cannot be the laguna de Socaire, or if it be that, the creek flowing into it cannot be the arroyo de los Alisos of the judicial survey.

3d. On the diseño is represented a laguna and small stream issuing from it at a considerable distance to the south of Higuera's house.

540 This laguna, tho' in the copy of the diseño, in the transcript it bears no name, is marked on the original "Laguna de Socaire." It must, therefore, be the same as that mentioned in the act of possession. Its position entirely corresponds with the situation of the laguna identified by the claimant's witnesses as the laguna de Socaire.

But the laguna suggested by the witness for the U. S. lies to the west of the house, and not to the south; and if the west line be no further protracted towards the south than that laguna, the south line will pass close to the house, and even through what is identified by some of the witnesses as the site of the ancient corral of Higuera.

It is for these reasons, in my judgment, clear beyond dispute that the laguna de Socaire and arroyito, which were passed when the western line was run, cannot be the laguna and arroyo spoken by the witnesses for the U. S.; but that they were situated much further to the south, and beyond the limits of the survey contended for by the U. S.

But the length of the western line run by the judicial offi-
541 cer is further shown by the call for the arroyo de los Alisos, which the record declares was meandered, after turning to the east, and when measuring the southern boundary.

Much testimony was taken to show that the stream which runs by the house of Higuera, and what is identified by some of the witnesses as his former rodeo ground, is the arroyo de los Alisos.

The claimants contend that the only stream known to the old inhabitants of the country by that name is the stream which is met on turning towards the east after passing the laguna de Socaire. I think that the proofs greatly preponderate in favor of the latter supposition.

Both streams have, it is true, alisos or sycamores upon them, and either might have acquired the name of "arroyo de los Alisos." But all the older inhabitants—Pico, who was the alcalde who gave the possession; Chabolla, who is the owner of the adjoining rancho to the south; Henry Bee, who has been in the country 23 years,
542 and others—concur in identifying the more southerly brook as that, and the only one known as the "arroyo de los Alisos."

If the observations which have been made with regard to the situation of the laguna de Socaire be just, it follows that the arroyo de los Alisos of the measurement must lie to the south of it, for the laguna and its arroyito were passed before turning to the east; whereas, if the arroyo contended for by the U. S. be the Alisos, it would have been reached not only before the laguna was passed, but before it was arrived at.

The witness for the U. S., sensible of the necessity of so far conforming to the description of the western line given in the record of judicial measurement as to run that line so as to pass a laguna and an arroyito, have attempted to make the more northerly arroyo, and a small pond into which runs, satisfy at once the call for the laguna and the arroyo de los Alisos. But this is, as before re-
543 marked, utterly inadmissible; for it is plain that the arroyito which flows from the laguna of the record of judicial measurement and the arroyo de los Alisos of the same document are wholly distinct streams.

There are also indications of the diseño, and facts testified to by the witnesses for the claimants, which support the views I have expressed. On the diseño is represented to the south and west of the

laguna and in the same direction from the house, and at the distance of several thousand varas according to the scale, a grove of trees. This is evidently the grove, the first tree of which was marked as the SW. corner. But if the SW. corner be established as contended for by the U. S., it will be situated nearly due west from the house, within a very short distance of which the southern line towards the hills will run. On the diseño the house is represented as situated about midway between the grove, on the south, and the arroyo de Aguage.

In the survey proposed by the U. S. the house is situated on
544 the extreme southern limit of the tract and almost on the boundary line.

Some of the witnesses for the claimants have identified the positions of the old corral and the rodeo ground of Higuera.

The traces of both these are nearly obliterated. But their positions are positively sworn to by ancient Spanish witnesses; and Mr. Healey, the very intelligent and candid surveyor of Santa Clara county, states that he discovers by the rank and peculiar vegetation of a spot near the house what he thinks must be the site of the old corral. It is precisely the place which the other witnesses state the corral actually existed. If, then, this testimony be accepted as fixing the positions of the corral and the rodeo ground, it affords another argument against the survey contended for by the U. S., for the southern line of that survey passes through the corral, leaving larger portion to the south, while the rodeo ground is wholly exclu-
545 ded. Some reliance is placed by the U. S. on the fact that at the southerly termination of the western line, as contended for by them, a tree is found with ancient marks upon it. But by whom and for what purpose these marks were made we are ignorant. They are said to be of the age of 20 or 25 years, as ascertained by counting the annulations, tho' one witness for the U. S. swears they are only 15 years old. If the latter statement be correct, they must have been made subsequently to the date of the judicial measurement (1835.) But the mere existence of a tree with marks upon it, even if ancient, is not enough to outweigh the reasons above enumerated for concluding that the western line could not have terminated at that tree, especially as the stump of another tree is found at the termination of the western line, as contended for by the claimants, which is of the kind (white oak) mentioned in the act of possession, and which is identified by the Alcalde Pico, and the adjoining rancho to Chabolla as the one actually marked as a boundary. From
546 the foregoing it will be seen that the theory of the U. S. as to the point of termination of the western line is founded on three principal considerations:

1st. The length as given in the record of judicial possession. To which it is answered, that independently of the notorious inaccuracy of such measurements under the former government, it appears in this case that the line was intended to be run more than twice as long as the first line from the solar to the rincon; whereas, by the theory of the U. S., the two lines would be nearly of the same length, thus

failing to conform to the record on a point as to which so gross a mistake is not conceivable.

2d. The identification of the more northerly arroyo as the Alisos. But as to this, we have seen that the preponderance of testimony is clearly against the theory of the U. S., and the evidence of the older and better informed inhabitants unanimously in favor of
547 the claimants. And further, that the situation of the laguna de Socaire, and the arroyito flowing from it, demonstrate that the arroyo to the north could not have been the arroyo de los Alisos of the judicial measurement.

3d. The existence of a tree with an ancient mark. But this circumstance, in the absence of testimony, showing it to have been marked at the time of the measurement as a corner, is wholly inconclusive; for it may have been marked previously, or subsequently, or even at the time, to indicate the course, but not the termination of the line; and in view of the other considerations above adverted to the fact becomes insignificant.

I therefore conclude that the termination of the western line should be that contended for by the claimants and established by the official survey.

It is not so easy to fix the length towards the west of the northern line along the Aguage. The termination claimed by the U. S. is a tree bearing an ancient mark, and situated at the distance of
548 2,160 varas from the rincon. The corner fixed by the official survey is at the distance of 2,895 varas from the rincon. The length of the line, as given in the act of possession, is 50 cordels, of 50 varas each, or 2,500 varas. There is no evidence to show by whom, or for what purpose, the mark was made upon the tree claimed by the U. S. to be the termination. Under ordinary circumstances, the fact that such a tree is found on or near the course of the line described in the act of possession, and at about the distance therein mentioned from the starting point, would be sufficient to fix it as the boundary mark established at the judicial measurement. But in this case the mention of the lengths of the lines, or the number of cordels measured, affords, as we have seen, no reliable information.

It is difficult to imagine that the alcalde, after measuring a line from the solar to the rincon, of the length, as he declares, of 50 cordels, or 2,500 varas, when, in fact, it is of nearly twice that length,
549 should, with the same cordel, and the same measurers, have so nearly arrived at the true length of the 2d line; and the improbability of his having done so is increased by the fact that, on proceeding to measure the third or western line the error is repeated, and the distance from its begining to its termination is stated at little more than one-half its actual length. The termination of the northern line is stated by Pico, the alcalde, and Chabolla, the assisting witness, to have been fixed at a point some 300 varas further west than that fixed in the official survey. But no trees are now standing at the place, and the stumps are those ash, sycamore, and live oak trees, (enciños,) but not of white oaks or robles, as mentioned in the act of possession. Pico accounts for these discrepancies between the

actual lengths of the lines, and those stated in the record of possession, by stating that the cordel, after being measured of the length of 50 varas, was doubled, and that the cordels referred to in
550 the act of possession were of 100 varas in length.

But even on this computation the measurement was still far from accurate; some of the lines being found to exceed, and others to fall short of, the required length.

The statement of Pico is confirmed, however, by a circumstance which renders it almost inconceivable that he should have committed so gross an error as must have been committed, if the cordels were only of the length of 50 varas.

On the diseño which accompanied the grant, and a copy of which is attached to the act of judicial measurement, is a scale of 2 leagues, of 5,000 varas each. By this scale the distance from the solar to the rincon is about 5,000 varas, or one league, approximating with tolerable closeness to the actual distance between those points. By the same scale the distance from the Aguage to the laguna de Socaire, and the roblar beyond, it appears to be about 2
551 leagues. If, then, the cordels referred to were of the length of only 50 varas, the error in the measurement is unaccountable; for the lengths of the lines were not merely but about $\frac{1}{2}$ as great as the distances actually run, but were only $\frac{1}{2}$ as great as the distances indicated by the scale of the diseño, according to which the grant was made, and which was before the alcalde in making the measurement. On the diseño which accompanied the espediente, there is traced a line from north to south, and at a distance from the hills, as shown by the scale, considerably exceeding that of the western line as fixed by the official survey, or as pointed out by Pico to Mr. Healy. This was evidently intended as the western exterior boundary of the tract granted; and no reason can be assigned why Pico, in running to the west, should have stopped at a point so far short of the exterior boundary as to make the rancho not much more than one-third of a league in width.

On the whole, it appears to me inconsistent and inadmissible. After ascertaining the gross errors which have been committed
552 with regard to the lengths of the eastern and western lines, to accept the mention in the act of possession of the length of the northern line as fixing its point of termination, and this merely on the strength of the fact that at or near that distance from the starting point a marked tree is found, not identified by any witness as the tree to which the measurement was actually made. Such seems to have been the view of the U. S. surveyor, by whom the official survey was made; and after determining the length towards the south of the western line, he has located it, or rather determined the length of the northern line, down the Aguage, by quantity, so as to include within the boundaries the one square league granted to Higuera.

If, however, we are governed as to the lengths of the lines by the act of possession, and the hills be excluded, as decided by the board,

there will be measured to the claimant a tract of not more
553 $\frac{3}{8}$ths of a league in extent, less than half the quantity granted.

I agree, therefore, with Mr. Healy (who has made two surveys of the rancho, one at the instance of the settlers, and the other at that of the U. S.) in thinking that the official survey is as just and proper a location of the grant as can now, under all the circumstances, be arrived at. The official survey is therefore approved.

Endorsed: Filed January 14, 1862.

W. H. CHEVERS, *Clerk.*

Decree approving official survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Saturday, the eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* ELLEN E. WHITE *et al*, widow and heirs of CHARLES WHITE, dec'd. } L. C., No. 638.—D. C., No. 233.

554 In the matter of the survey and location of the rancho called "Pala."

This cause came on this day to be heard and was argued by counsel; and thereupon, and in consideration thereof, the court is of opinion that there is no error in the official survey of said rancho. It is therefore ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the said official survey be, and the same is hereby, approved and confirmed as a correct and final survey of said rancho Pala. The survey hereby approved is the same made by John Wallace in March, eighteen hundred and fifty-eight, (1858,) containing four thousand four hundred and fifty-four $\frac{8}{100}$ acres (4,454$\frac{8}{100}$,) and approved by J. W. Mandeville, United States surveyor general for the State of California, on the 19th day of January, 1860. A copy of the plat of which survey, certified by the said J. W. Mandeville, was filed in the clerk's office of this court on the 25th day of October, 1860, and is hereunto attached, and marked "approved January 18th, 1862, Ogden Hoffman, U. S. dist. judge."

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed January 18, 1862.

W. H. CHEVERS, *Clerk.*

(Here follows plat, page 554.)

555 *Order granting appeal in behalf of United States.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Thursday, the 24th day of April, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ELLEN E. WHITE *et al.* } No. 233.

This cause came on to be heard, pursuant to the provisions of the act of Congress approved June 14, 1860, on objections filed to the survey and location by the surveyor general of the United States for California of the land heretofore confirmed to the claimants; and the said survey and location having been approved by the court
556 by its final decree entered January 18, 1862: Now, on application of Wm. H. Sharp, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from said final decree be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed April 24, 1862.

W. H. CHEVERS, *Clerk.*

I, William H. Sharp, district attorney of the United States for the northern district of California, by virtue of the power vested in me by law, to wit, under the act of the Congress of the United States entitled "An act relative to appeals to the Supreme Court of the United States," approved August 6th 1861, do hereby certify that the annexed and foregoing five hundred and fifty-six (556) consecutively numbered written pages, together with the five maps or plats also annexed hereto, exhibit a full, true, and correct transcript of the record and proceedings in the case of the United States *v.* Ellen E. White *et al.*, and numbered 233 on the docket of land cases in the district court of the United States for the northern district of California, and that the original papers and maps from which the said transcript has been made were duly delivered to me by the clerk of said district court at my request, for the purpose of having them transcribed, and the same are of record and on file in the clerk's office of said district court.

In testimony whereof, I have hereto set my hand and seal, at San Francisco, in the district aforesaid, this 28th day of April, A. D. 1861, and of our independence the 86th.

[SEAL.]

WM. H. SHARP,
U. S. Attorney, Northern District of California.

Filed 10th March, 1863.